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CIS

OPTIONS TO IMPROVE THE TRADE REMEDY LAWS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

MARCH 16, 17; APRIL 13, 14, 19; AND MAY 4, 11, 1983

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OPTIONS TO IMPROVE THE TRADE REMEDY LAWS

WEDNESDAY, MARCH 16, 1983

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, D.C.

The subcommittee met at 9:35 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[Press releases announcing the hearings follow:]

[Press release No. 3, Tuesday, February 15, 1983]

Hon. Sam M. Gibbons (D.–Fla.), Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Announces Hearings on Trade Remedy Laws

Hon. Sam M. Gibbons (D.-Fla.), chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the subcommittee will be holding hearings in March to consider options to improve the Nation's trade remedy laws. The exact date and location will be announced later.

Statutes to be reviewed include the antidumping and countervailing duty laws as amended by the Trade Agreements Act of 1979; the provisions of the Trade Act of 1974 pertaining to import relief (section 201-203), market disruption (section 406), and enforcement of U.S. rights in international commerce (section 301); and section 337 of the Tariff Act of 1930 pertaining to unfair import competition. The Subcommittee also seeks suggestions on how the international dispute settlement process might be made more efficient and effective.

The subcommittee is particularly interested in determining how the expense and time involved in processing cases under current procedures might be reduced in order to ensure U.S. industry and labor, including small business, access to trade remedies. Such laws must be successful in counteracting foreign unfair trade practices, facilitating adjustment of dislocated industries and workers to increased fair import competition, and strengthening the Government's ability to identify and address trade distorting policies pursued by foreign governments. The subcommittee is also concerned that the international dispute settlement procedures operate more effectively to remove unfair trade practices.

Several proposals have already been raised for subcommittee consideration, including the following:

(1) Improving administration of antidumping and countervailing duty laws to make these important remedies less complex, costly, and time comsuming for all parties; e.g., simplification of calculation procedures, curtailment of interlocutory judicial review, and modification of preliminary determinations.

(2) Modifying existing laws to deal more effectively with price competition from nonmarket economy countries. Proposals include the creation of a new "artificial pricing" test more realistic than the test applied under existing antidumping law (see S. 958, introduced in the 97th Congress).

(3) Transforming import relief law into a truly effective adjustment statute which will promote modernization and productivity in industries chronically affected by import competition.

(4) Strengthening and clarifying section 301 authority and procedures to identify and eliminate foreign unjustifiable or unreasonable trade policies or acts. Suggestions have been made to expand the scope of this law, increase self-initiated action by the President, authorize the use of a broader range of retaliatory devices such as countersubsidy programs or regulatory action, and revise administrative procedures, including time limits.

Participants are urged to address these ideas and to make other suggestions for administrative or legislative changes in as specific a form as possible.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

Request to be heard may be made by telephone to Harriett Lawler [telephone (202) 225-3627]. The request should be followed by a formal written request addressed to John J. Salmon, chief counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. Details of statement requirements will also be announced in a later press release.

[Press release No. 6, Friday, February 25, 1983]

HON. SAM M. GIBBONS (D-FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES DATES FOR HEARING ON TRADE REMEDY LAWS

Hon. Sam. M. Gibbons (D.-Fla.), chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the subcommittee hearing on options to improve the trade remedy laws will be held on Wednesday, March 16, 1983, beginning at 9:30 a.m. in room 1100 Longworth House Office Building. If necessary, the hearing will continue on March 17 at a time and location to be announced later. Details of the hearing had been announced previously in subcommittee press release No. 3. The subcommittee will receive testimony from administration witnesses as well as witnesses from the private sector familiar with the operation of these laws.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

Requests to be heard must be made by telephone to Harriett Lawler [telephone (202) 225-3627] by the close of business, Friday, March 11, 1983. The request should be followed by a formal written request addressed to John J. Salmon, chief counsel, Committee on Ways and Means, U.S. of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the subcommittee are required to submit 75 copies of their prepared statements to the full committee office, room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearances.

Each statement to be presented to the subcommittee or any written statement submitted for the record must contain the following information:

(1) The name, full address, and capacity in which the witness will appear (as well as a telephone number where he or his designated representative may be reached);

(2) A list of any clients or persons, or any organization for whom the witness appears; and

(3) A topical outline or summary of the comments and recommendations in the full statement.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE

Persons submitting a written statement in lieu of a personal appearance should submit six copies of their statement, by the close of business Friday, April 29, 1983, to John J. Salmon, chief counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may submit 50 additional copies for this purpose if provided to the committee during the course of the public hearing.

[Press release No. 8, Wednesday, March 30, 1983]

HON. SAM M. GIBBONS (D.-FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES DATES FOR CONTINUATION OF HEARINGS ON U.S. TRADE REMEDY LAWS AND ON UNITED STATES-JAPAN TRADE RELATIONS

Hon. Sam M. Gibbons (D.-Fla.), chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that hearings on U.S. trade remedy laws (previously announced in press releases No. 3 and No. 6) begun on March 16 and 17, 1983, will continue on Wednesday, April 13, Thursday, April 14, and Tuesday, April 19, 1983. These hearings will begin at 2 p.m. on April 13 and at 9:30 a.m. on April 14 and 19.

Chairman Gibbons also announced that hearings on United States-Japan trade relations (previously announced in press releases No. 4 and No. 5) begun on March 10, 1983, will continue on Thursday, April 21, beginning at 9:30 a.m. and on Tuesday, April 26, beginning at 10 a.m.

Both sets of hearings will be held in the Committee on Ways and Means main hearing room, 1100 Longworth House Office Building, on all days except April 19 and April 26. The location on these days will be announced later.

Testimony will be received from witnesses who have already requested or been invited to appear. In order to assure the most productive use of the limited amount of time available for questioning, witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements to the full committee office, room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearances.

Each statement to be presented to the Subcommittee or any written statement submitted for the record must contain the following information:

(1) The name, full address, and capacity in which the witness will appear (as well as a telephone number where he or his designated representative may be reached);

(2) A list of any clients or persons, or any organization for whom the witness appears; and

(3) A topical outline or summary of the comments and recommendations in the full statement.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE

Persons submitting a written statement in lieu of a personal appearance should submit six copies of their statement, by the close of business, Friday, April 29, 1983, to John J. Salmon, chief counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 50 additional copies during the course of the public hearing.

Chairman **GIBBONS**. The meeting will come to order. As everyone knows, this is a meeting of the Trade Subcommittee of the Committee on Ways and Means. Today the subcommittee begins several days of hearings on the operation of our trade remedy laws. We will receive testimony from administration witnesses at both the policy and administration level. We will receive testimony from Members of Congress and from a broad range of private sector witnesses representing domestic industries, labor, importers, and retailers.

We are holding these hearings because of our concern that U.S. law does not operate as effectively as it should to insure the fair conduct of international trade and the competitiveness of U.S. industries. The United States has historically maintained an extremely comprehensive body of trade remedy laws to deter unfair trade practices, promote adjustment to increased fair trade, and otherwise protect U.S. commercial interests against violations of trade agreements or other trade-distorting measures.

These laws have provided an avenue for private interests to petition the Government and obtain reasonably prompt action. This committee strongly supports such laws and considers them essential to U.S. trade policy.

There has been a lot of discussion recently about the fact that it is tremendously expensive, to say nothing of time consuming, to petition the Government for remedies, even to find out who to petition and how to petition, and to gather evidence. And the remedies have been somewhat uncertain, all of which seems to me to have promoted sort of a feeling of distrust that your Government is doing what is right by its citizens.

I hope that we can remedy these problems. I do not want to remedy them by putting a lot of protectionist-type statutes on the books or to in any way diminish the fairness or even the apparent fairness of our laws. But somehow we must find ways to reduce the cost, to speed up the relief petitions; and when a case is proved, to get some demonstrable relief for the petitioner, for the aggrieved person.

That is the objective of these hearings. I know this is a tough subject to handle. I hope that all of you will be very patient with us and be very candid with us. Not at this hearing today, but perhaps starting tomorrow and from here on out, I will ask people to have not more than four pages of written testimony that they wish to read into the record, if they want to do that, and then to be prepared to summarize their testimony.

I do not do that to detract at all from what you have said, but after 9 hours of hearings last week—I think all of you remember the old adage that the brain cannot absorb what the posterior cannot endure. Those hearings got extremely long, and I would like to find some way of speeding them up.

I do not want to cut anyone off, but four pages of reading is enough. I am talking about legal-sized pages, now. And then the rest of it should come from your heart and your mind and not from reading extensive matters.

I think all of you know that such institutions as the Supreme Court do not allow you to read extensively into the record. It is supposed to be prohibited in the House of Representatives, although it is one of the prohibitions we do not observe too often.

If you are nervous about delivering your statement, we will let you read it. But as I say, the purpose is to try to get more between our ears out of all the tremendous amount of material we put in the record.

Mr. Frenzel, would you like to make any opening statement before we hear these fine witnesses this morning?

Mr. **Frenzel**. Mr. Chairman, I would not. I would much rather hear the fine witnesses.

Chairman **Gibbons**. All right.

The first group of witnesses is a panel composed of the U.S. Trade Representative, represented this morning by Ambassador Michael Smith, who is the Deputy U.S. Trade Representative. We welcome you home, Ambassador Smith.

Also on the panel is the U.S. Department of Commerce, this morning represented by Hon. Lionel H. Olmer, who is Under Secretary for International Trade; and the U.S. International Trade Commission, represented by Hon. Alfred Eckes, who is Chairman of that Commission.

Ambassador Smith, we will begin with you and you may proceed as you wish.

STATEMENT OF AMBASSADOR MICHAEL B. SMITH, DEPUTY U.S. TRADE REPRESENTATIVE, ACCOMPANIED BY C. MICHAEL HATHAWAY, DEPUTY COUNSEL

Ambassador **Smith**. Thank you very much, Mr. Chairman.

I would like to summarize my statement, which as I understand has already been submitted to your committee, sir.

Chairman **Gibbons**. Without objection, all statements made in this hearing will be placed in the record in full at the end of whatever opening statement witnesses wish to make.

Go right ahead.

Ambassador **Smith**. Thank you, sir.

I am pleased to have the opportunity to testify before you today on our trade remedy laws. It is my hope that these timely hearings will provide the focus for a thorough review of the purpose, limits and application of these laws. I would like at this time to pledge the full cooperation of the administration in this effort and to express the administration's desire to continue the task that begins in this hearing through a constructive and continuing dialog with the Congress and the private sector to assure that our trade laws work to accomplish their purpose.

I think it is important that we keep in mind that the experiences of the last quarter century have shown that we once exported more than we imported. However, we now are encountering some problems in the sense that our imports are exceeding our exports and have done so since 1976. We expect our trade deficit to rise sharply in 1983.

This being said, we believe that the administration has a positive plan to meet the trade challenges on three key fronts: one, to lay a firm foundation for noninflationary growth; second, to enhance the ability of U.S. producers and industries to compete on a fair and equitable basis in the international marketplace.

In this regard we must continue to work with our trading partners to resolve outstanding problems of market access and to chart new directions for free and fair trade in the products of the future.

Third, we must continue to take the lead in assisting international financial and trade institutions to strengthen world growth.

We believe that this framework of three items will enable us to help lead our producers and trading partners toward more open markets and greater freedom and human progress. The basis for these hearings, sir, is precisely this as we understand it: Simply stated, for international trade to thrive it must be fair, the international rules of the road must be predictable, and the trading partners must play by the same rules. We must be prepared to take action to enforce our international rights wherever necessary, and we must make certain also that our own laws operate fairly and efficiently.

A basic administration philosophy is to promote open but fair international trade. In regard to the trade laws, sir, they distinguish between fair and unfair trade and provide remedies only when certain criteria are satisfied.

There are competing interests in the need for fair and open procedures on the one hand and the desire for expeditious decisions on the other. In reviewing what has happened in specific cases, we must keep in mind that each side in any case is first and foremost interested in how the law or its administration affects its own interests.

Opposition to the status quo does not necessarily mean that any particular trade remedy law is not serving its intended purpose. It may well be that trade remedies are sought in individual cases to solve a wide range of problems, problems which the laws were never designed or intended to cover.

Having said that, sir, it must also be said that it is possible that maintaining the status quo will not best serve the intended purpose of our trade remedy laws. This does not mean that changes in the administration of the laws, or even the laws themselves, is necessary and appropriate. We therefore must look carefully at the purpose of each trade remedy law and carefully examine any suggestion for modification in the application of the statute.

As you know, we have laws on antidumping, countervailing duty laws, section 337, which have grown in importance, and other trade remedies which are designed to provide relief to domestic industries facing fair but injurious import competition, for example section 406 and section 201.

The other form of trade remedy law is designed to facilitate the elimination of a foreign practice that burdens or restricts U.S. commerce, especially those that violate the international legal rights of the United States. The statutory provision dealing with this is found in section 301 of the Trade Act of 1974.

The administration is committed to the vigorous enforcement of these laws and looks forward to a more detailed examination of their application later in this hearing. We look forward to hearing from the private sector and the Congress on trade remedy laws, and we will work with the Congress to evaluate the results of these hearings and to decide what course of action is most appropriate for each remedy.

We would suggest, sir, that as we begin this review we must be mindful of the relationship between our trade remedy laws and our international rights and obligations. We do have international obligations and there are reasons for them.

Our adherence to a free and fair trade policy requires us to strictly enforce existing trade agreements, to strengthen our domestic trade laws to make them more useful and responsive to the needs of those they protect, and to seek expanded coverage of trade issues under the mutually accepted international framework of the GATT.

In doing so, we must not lose sight of the fact that the United States and its trading partners must work within the framework of mutually agreed international obligations, which is again the GATT. And I think one can say that the GATT has worked reasonably well if the expansion of world trade over the past 35 years is any indication.

I think it is no secret that there is now some frustration with what appears to be the GATT's seeming inability to deal with new forms of barriers and trade distortions. We have certainly not reached the point that the United States should abandon its commitment to the international trading system. Moreover, our current frustrations in the trade area are not in and of themselves a justification for a resort to negative unilateral actions. It is still in our long-term interests to continue our efforts to strengthen the international code of conduct and make it work.

In doing so, four principles will guide our approach:

First, we must be consistent with current U.S. obligations under the GATT and other international agreements;

Second, we must recognize that our overall interests are best served by multilateral rather than bilateral or sectoral solutions;

Third, we must focus on strengthening existing international institutions and expanding international agreements to include those areas, such as services, investment and high technology, which are not presently covered;

And fourth, we must strengthen the negotiating mandate and flexibility of the President in his efforts to achieve a more liberal world trading system and a reduction, if not elimination, of foreign barriers to U.S. workers and enterprises.

This, Mr. Chairman, brings me to the question of the effectiveness of section 301. Section 301 is both an authorization to the President to take retaliatory action against a foreign government and a means by which domestic interests can bring to the Government's attention the fact that foreign practices are adversely affecting our interests.

With respect to the latter point, I think that we can say that 301 is proving effective in light of the number of cases which are now being filed. Since August 1981, we have initiated 17 301 investigations. Thus, more than 40 percent of all the investigations initiated under section 301 since 1975 have been initiated in the last 18 months.

With regard to the former point, that is to say the effectiveness of 301 as a tool of retaliation, let me make several points. First, I think it is safe to say that retaliation is not a preferred result in any 301 case. Rather, our goal is to eliminate or modify a foreign practice which is adversely affecting U.S. interests. We must recognize that authority for retaliatory action is most effective because of its availability and not because of its actual use.

Indeed, the knowledge that the United States could retaliate under 301 has led to a settlement of a number of issues. This would include, for example, Korean insurance restrictions and Japanese treatment of imported cigars and pipe tobacco.

It is also true that just the threat of 301 can be effective even before an investigation is initiated, and this has happened with Venezuela, Japan, and the Community in certain aspects.

However, since issues raised under 301 can and indeed have gone beyond the traditional product area, we have had to examine the scope of the President's authority to respond, to determine if it is adequate to satisfy the purposes of the statute. We have concluded that there is no need for new authority.

We have had some experience in the relationship between the domestic procedures of section 301 and the GATT and code dispute settlements. These have been discussed in the context of a reciprocity bill, and we can see some areas in which section 301 might be improved.

For example, we have already experienced difficulty with section 303. That section requires that we request consultations with the foreign government on the same day that we decide to initiate an investigation into the allegations of a 301 petition. The result is that we are required to initiate the dispute settlement process internationally before we have even begun our investigation domestically.

In certain subsidies code cases, a request for consultations must include evidence of the adverse effect of the subsidy on the complaining U.S. industry. Since evidence essential to the dispute settlement case is developed in the course of the domestic investigation, we may be in a position where we are presenting our case in the international dispute settlement forum before it has been fully developed. Especially steel cases are an example of this.

Turning to an event more recent, we have had a frustration with the GATT dispute settlement system arising from the unwillingness or inability of panels to make decisions. The wheat flour case is a case in point. I need not go through the agony, if you will, of that, but the point is that the failure of that panel to make a decision calls into question effectiveness of the GATT's dispute settlement process and undermines the limited discipline that now exists for agricultural trade.

Our trading partners in the GATT must understand that it is in our mutual interest to have the GATT process work. The alternative is the gradual collapse of the system, which will move us back toward bilateral protectionism. We cannot make it succeed on our own and others must go in step with us.

In this sense, Mr. Chairman, the challenge before us is clear. We must make the system work. We have had our bumps and bruises on this and we have a long way to go. But sincerely, we believe it is worth the effort.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF AMBASSADOR MICHAEL B. SMITH, DEPUTY U.S. TRADE REPRESENTATIVE

Mr. Chairman, I am Michael B. Smith, Deputy U.S. Trade Representative. I am pleased to have the opportunity to testify before you today on our trade remedy laws. It is my hope that these timely hearings will provide the focus for a thorough review of the purpose, limits and application of these laws. I would like at this time to pledge the full cooperation of the administration in this effort, and to express our desire to continue the task that begins in this hearing through a constructive and continuing dialogue with the Congress and the private sector to ensure that our trade laws work to accomplish their purpose.

At the outset of these oversight hearings, let us keep in mind that for a quarter of a century after the Second World War, we exported more goods each year to the rest of the world than we imported. We accumlated a surplus of funds which was invested at home and abroad, and which created jobs and increased economic prosperity. But during the past decade, we began importing more than we were exporting. Since 1976, imports have exceeded exports every year and our trade deficit is expected to rise sharply in 1983.

As we look beyond our own borders to meet this trade challenge of the 1980's, we see that potential for growth is enormous: A $2 trillion market abroad gives us an opportunity to create millions of jobs and more income security for our people by increased sales overseas.

As President Reagan recently stated, the administration has a positive plan to meet the trade challenge on three key fronts.

First, we must lay a firm foundation for non-inflationary growth based on enduring economic principles of fiscal and monetary discipline, competition, incentives, thrift and reward.

Second, we need to enhance the ability of U.S. producers and industries to compete on a fair and equitable basis in the international marketplace. In this regard, we must continue to work with our trading partners to resolve outstanding problems or market access, and to chart new directions for free and fair trade in the products of the future.

Third, we have to take the lead in assisting international financial and trade institutions to strengthen world growth and bolster the forces of freedom and democracy. Taken together, these actions give the United States a positive framework for leading our producers and trading partners toward more open markets, greater freedom and human progress.

The basis for much in the President's statement is the subject of these hearings. Simply stated, for international trade to thrive it must be fair, the international rules of the road must be predictable, and trading partners must play by the same rules. We must be prepared to take action to enforce our international rights whenever necessary. We must also make certain that our own laws operate fairly and efficiently.

A basic administration philosophy is to promote open, but fair, international trade. This stimulates competition between the United States and foreign nations, thereby allocating our national resources to the most efficient lines of production. Consumers benefit through lower prices and a greater selection of goods in the marketplace, and inflationary price increases are restrained, Economic growth and full employment are fostered through expanded export markets for U.S. goods and services.

Our trade laws distinguish between fair and unfair trade, and provide remedies only when certain criteria are satisfied. Domestic industries who seek recourse to these laws, and importers or foreign companies or governments who are affected by their applications, have specific interests in how these laws work. There are, for example, competing interests in the need for fair and open procedures on the one hand, and the desire for expeditious decisions on the other. In reviewing what has happened in specific cases, we must keep in mind that each side in any case is, first and foremost, interested in how the law, or its administration, affects its own interests.

Opposition to the status quo does not necessarily mean that any particular trade remedy law is not serving its intended purpose. It may well be that trade remedies are sought in individual cases to solve a wide range of problems—problems which the laws were never designed or intended to cover.

Having said that, it must also be said that it is possible that maintaining the status quo will not best serve the intended purpose of our trade remedy laws. This does not mean that changes in the administration of the laws, or even the laws themselves, is necessary or appropriate.

We must look carefully at the purpose of each trade remedy law, and carefully examine any suggestion for modifications in the application of the statute. We must carefully review these laws in light of their stated purposes. For example we have a number of trade remedies that are designed to meet specifically identified unfair trade practices. The most notable examples are our antidumping and countervailing duty laws. The antidumping laws being designed to remedy unfairly low priced imports into the United States. The countervailing duty laws being designed to address unfairly subsidized imports into the United States. In addition, section 337 has come to be used as an effective remedy against imports of merchandise that are unfair because of, for example, violations of United States patents.

Other trade remedies are designed to provide relief to domestic industries facing fair but injurious import competition. Section 406 dealing with market disrupting imports from non-market economy countries and section 201 dealing with fair imports from all sources are the primary examples of that type of statute.

The other form of trade remedy law is designed to facilitate the elimination of a foreign practice that burdens or restricts U.S. commerce, especially those that violate the international legal rights of the United States. The statutory provision dealing with this is found in section 301 of the Trade Act of 1974.

The Administration is committed to the vigorous enforcement of these laws and looks forward to a more detailed examination of their application later in these hearings. We look forward to hearing from the private sector and the Congress on trade remedy laws and will work with the Congress to evaluate the results of these hearings and to decide what course of action is most appropriate for each remedy.

INTERNATIONAL IMPLICATIONS

As we begin this review we must be mindful of the relationship between our trade remedy laws and our international rights and obligations. We do have international obligations. There is a reason for them. These common rules operate to our advantage. No one country should expect them to satisfy each and every desire of their domestic interests. However, the international discipline does directly benefit our exports. While some may see the international discipline as an impediment to import regulation, it must also be seen as a direct benefit to our exports.

Our adherence to a free and fair trade policy requires us to strictly enforce existing trade agreements, to strengthen our domestic trade laws to make them more useful and responsive to the needs of those they protect, and to seek expanded coverage of trade issues under the mutually accepted international framework of the General Agreement on Tariffs and Trade.

In following this course of action, we must not lose sight of the fact that the United States and its trading partners must work within the framework of mutually agreed international obligations. The major reason for the existence of the General Agreement on Tariffs and Trade [GATT] is in the desire to eliminate the trade destructive retaliatory practices of the two decades preceding World War II. The GATT has worked reasonably well if the expansion of world trade over the past 35 years is any indication.

While there is currently a great deal of frustration with GATT's seeming inability to deal with new forms of barriers and trade distortions, we have certainly not reached the point that the United States should abandon its commitment to the international trading system. Moreover, our current frustrations in the trade area are not in and of themselves a justification for our resort to negative unilateral actions. On the contrary, it is still in our long-term interests to continue our efforts to strengthen the international code of conduct and make it work. Therefore, we must consider any piece of trade legislation that have been introduced in this Congress from this perspective.

Four principles will guide our approach:

First, we must be consistent with current U.S. obligations under the GATT and other international agreements.

Second, we must recognize that our overall interests are best served by multilateral rather than bilateral or sectoral solutions.

Third, we must focus on strengthening existing international institutions and expanding international agreements to include those areas, such as services, investment and high technology not presently covered.

Fourth, we must strenthen the negotiating mandate and flexibility of the President in his efforts to achieve a more liberal world trading system and a reduction of foreign barriers to U.S. workers and enterprises.

This brings me to the question of the effectiveness of section 301 in responding to policies and practices of foreign governments that are either inconsistent with their obligations under trade agreements or deemed to be unreasonable, unjustifiable or discriminatory and a burden on U.S. commerce. Section 301 is both an authorization to the President to take retaliatory action against a foreign government and a means by which domestic interests can bring to the U.S. Government's attention the fact that foreign practices are adversely affecting our interests. With respect to the latter I think we must say that 301 is proving effective in light of the number of cases which are now being file. Since August 1981, we have initiated 17 section 301 investigations. Thus, more than 40 percent of all investigations initiated under section 301 since 1975 have been initiated in the last 18 months.

With respect to the effectiveness of 301 as a tool of retaliation, let me make several points. First, retaliation is not a preferred result in any 301 case. Rather our goal is to eliminate or modify a foreign practice which is adversely affecting U.S. interests. The authority to retaliate conferred by section 301 is intended to provide the necessary leverage to obtain this result. We must recognize that authority for retaliatory action is most effective because of its availabilty and not because of its actual use. In numerous past instances, the knowledge that the U.S. could retaliate under 301 has led to a settlement of the issue. This is reflected by the fact that 75 percent of the completed section 301 cases are satisfactorily resolved short of retaliation. Those cases include, for example, foreign practices ranging from Korean insurance restrictions to Japanese treatment of imported cigars and pipe tobacco. It is also true that the threat of action under section 301 can be effective before an investigation is initiated or even before a petition is filed. This is reflected in our experiences with Venezuela over dried prune exports, Japan concerning subsidized rise and the European Community concerning subsidized export financing. Where the foreign practice complained of falls into the traditional areas of tariffs and nontariff barriers, we are able to devise an appropriate response with relative ease. However, since issues raised under 301 can, and have gone beyond the traditional product area, we have had to examine the scope of the President's authority to respond to determine if it is adequate to satisfy the purposes of the statute. We have concluded that there is no need for new authority.

Foreign practices in the investment and services sector were reviewed in the context of the section 301 revisions contained inproposed reciprocity legislation, and appropriate clarifications have been agreed to by the administration.

While a product retaliation, which might take the form of a tariff increase, is permissible under domestic law, such retaliation in an investment or services case might place the United States in violation of its international obligations under the GATT. This sort of issue is dealt with in pending legislation sponsored by Congressmen Jones and Frenzel and Chairman Gibbons. The Administration supports the purpose of that legislation.

Our experience with the relationship between the domestic procedures of section 301 investigations and the GATT and Code dispute settlement process is broadening as we proceed with the investigation of the cases noted earlier. These have been discussed within the context of a reciprocity bill. We can see some areas in which section 301 might be improved.

For example, we have already experienced difficulty with Section 303. That section requires that we request consultations with a foreign government on the same day that we decide to initiate an investigation into the allegations of a 301 petition. The result is that we are required to initiate the dispute settlement process internationally before we've even begun our investigation domestically. In certain Subsidies Code cases, a request for consultations must include evidence of the adverse effect of the subsidy on the complaining U.S. industry. Since evidence essential to the dispute settlement case is developed in the course of the domestic investigation, we may be in a position where we are presenting our case in the international dispute settlement forum before it has been fully developed. The specialty steel cases are an example of this.

Our recent experience with the GATT dispute settlement system arising from these section 301 cases as well as other actions has raised questions about the present ability of the GATT system to resolve disputes. The recent wheat flour decision is an example of the problems we face in the GATT

We are seriously troubled by the unwillingness and inability of the wheat flour GATT dispute settlement panel to deal forcefully with U.S. complaints against European practices in wheat flour sales. The United States had charged that the EC European Community used export subsidies in violation of its international obligations under the GATT.

The panel reached factual conclusions that during the time the EC used export subsidies, their share of the world market increased while ours decreased. This clearly supports the United States' position that, through export subsidies, the EC has taken a more than equitable share of world wheat flour trade.

Despite this, the panel refused to make the legal conclusions dictated by the facts and, thus left the major legal issue unresolved.

The panel's action, which takes the form of a non-binding recommendation to the Subsidies Code Committee, would undercut the already weak discipline on agricultural export subsidies. Although we can and will protect U.S. agricultural interests under these circumstances, we feel that the GATT Code Committee soon must answer the legal issue left unresolved by the panel.

This failure to make a decision calls into question the effectiveness of the GATT's dispute settlement process, and undermines the limited discipline is the gradual collapse of the system that now exists for agricultural trade. Our trading partners in the GATT must understand that it is in our mutual interest to have the GATT process work. We cannot make it succeed on our own, and others must go in the step with us. The world economy needs now more than ever an international discipline to balance competing exporting and importing interests. The challenge for us is clear. We must make the system work. We have a long way to go, but it is worth the effort.

Chairman GIBBONS. Thank you, Mr. Ambassador.

Before we go to discussion Mr. Olmer.

STATEMENT OF HON. LIONEL H. OLMER, UNDER SECRETARY FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE, ACCOMPANIED BY GARY HORLICK, DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION

Mr. OLMER. Thank you, Mr. Chairman.

There is a perception, one that this committee is certainly going to hear more about as the hearing progresses, that our trade laws as now written and administered are not what they should be. The question before the house really is, by what standard.

It seems to me that there are a variety of standards that might be applied: One, do they always provide relief? Well, clearly they do not, nor do I think they should always provide relief. If imports are a prime cause of serious injury, then temporary import relief is warranted to allow the industry to regain its strength or to adjust to its ills.

But where foreign exporters are competing fairly and imports are not the major factor in what is wrong, what we need is more competitiveness and not more protection.

Another standard would be to measure our trade laws by how well they have been administered. Of all of our trade laws in the United States, the antidumping and countervailing duty laws are the most frequently used and affect most of the U.S. companies who bring petitions, and the most products and probably the greatest dollar volume of imports into the United States are represented by the AD and CDV provisions of our law.

The criteria set forth by the Congress for antidumping and countervailing duties are pretty objective, in contrast perhaps to other, more squishy parts of U.S. trade laws, and I believe therefore you can make a judgment about the adequacy of how well the trade laws in this regard serve their intended purpose.

In 1981 the International Trade Administration of the Department of Commerce coped with not only the largest number of AD and CDV petitions ever filed, but also the most complex questions ever considered. There were 216 proceedings in 1982, compared with 25 in 1981, and 30 in 1980—over a 600 percent increase.

Despite this explosion of activity, we met all of the statutory deadlines. And I would like to introduce for the few people in this room who may not know him, which is hard to believe, Deputy Assistant Secretary Gary Horlick, to whom we owe a great debt for his management of that system.

In my judgment, on a standard of how well our laws have been administered—and I realize to an extent that is self-serving—our dumping and countervailing duty laws provide strong evidence that those complex statutes have been effective. But another standard might be whether our trade laws cover all of our trade problems, and with few exceptions it is my opinion that they do.

In summary, the test that is used by the public or by the Congress or by the administration as to the adequacy of the trade laws needs to be a combination of standards: whether the laws create and maintain the reality and the perception of fair competition and a climate for U.S. competitiveness in our market and in foreign markets; they have to be well administered; and they must deal with the reality of the trade problems that exist in the world.

Fundamentally, I believe that our laws measure up well. We can make some administrative changes that would make a significant difference in how effective our trade laws are, and I have a number of suggestions in this regard.

First, in the Department we are looking at ways of ensuring greater access to the antidumping and countervailing duty laws. Small petitioners could be particularly benefited by efforts to make the whole procedure simpler and less expensive. It now costs roughly a million dollars to process an antidumping petition.

Second, we are reviewing ways to simplify the dumping and countervailing duty investigation methodology, to eliminate what we would call unnecessary complexities in the calculations. High on our priority list for simplification are the current compliance procedures under section 751. Another is to concentrate judicial review in one proceeding. We do believe there are significant advantages to reducing interlocutory review at the preliminary stages of the proceedings and to combine them at the final level of the proceeding.

We are also exploring ways in which we might expedite relief. The key to expediting relief, however, I must underscore, is not to shorten the statutory deadlines. We have found that we barely have an adequate period now in which to meet the criteria set out by the Congress and in our regulatory procedures.

Another area is the threat of injury concept, which perhaps has not yet been developed to where it could be especially significant for industries with rapid technological change and product development, where relief may now come only after the product in question is obsolete and a new problem or product has appeared. But in this area we have got to proceed very cautiously, lest we open up a floodgate of petitions that really have no merit.

We are also looking at ways to ensure that our countervailing duty law effectively covers various foreign practices that were not contemplated when the law was written. Several cases in the past year have demonstrated that the novelty or subtlety of a subsidy practice cannot give it immunity from countervailing duty laws, but our international competitors, as you well know, Mr. Chairman, are quite inventive at devising new trade distortive practices.

A significant area for all of us to focus on is that of industrial targeting, by which I mean government-directed or assisted programs which artificially enhance a particular industry's international competitiveness. Now, targeting can encompass a complex variety of practices which individually are sometimes fair, but which are sometimes unfair.

The targeting issue is enormously complicated, and it is made so in part by the fact that the practices and the effects shift over time. For example, in the case of a recently targeted industry, the foreign targeting practices are ongoing but no targeted exports may yet have reached U.S. shores. But in the case of an industry targeted in the past the effects may be serious and continuing long after the foreign practices have ceased.

Just as targeting itself is complex, so is the question of how to deal with it, and whether or the extent to which our trade laws are the most appropriate and most effective means for doing so.

Mr. Chairman and members of your committee, as we work with the Congress and the private sector in the coming months on how our trade laws might work more effectively, we look forward to also exploring answers with you and the private sector especially on the questions posed on the subject of industrial targeting, which I happen to believe is topic A for the next several years to come.

Thank you, sir.

[The prepared statement follows:]

STATEMENT OF HON. LIONEL H. OLMER, UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE

Mr. Chairman, I am pleased to appear before the Trade Subcommittee of the House Ways and Means Committee to discuss this country's unfair trade and import relief laws.

There seems to be a perception—one this committee will surely hear more about as this hearing progresses—that our trade laws, as now written and administered, are not what they should be. To judge whether that perception is correct, and to determine how our trade laws are lacking if they are, we must measure those laws against some standard. The question then is: What standard? It may be useful to see how our trade laws stack up against several possible yardsticks.

First, we could ask whether our trade laws always—or virtually always—lead to import relief for the domestic industry seeking it. Our laws do not give relief to every domestic petitioner, but neither should they. I understand why a domestic industry facing substantial and perhaps rising competition from low-priced imports, particularly in a recession, may feel the time has come for this country's laws to come to its aid. If the import competition is unfair, there is and should be relief. If imports are a prime cause of serious injury to the industry, temporary import relief may be warranted to allow the industry to regain its strength or adjust to its ills. But where foreign exporters are competing in this market fairly and imports are not the major factor in what is wrong with a U.S. industry, what we need is more competitiveness, not more protection.

Some may choose the opposite test of our trade laws, believing that they should deny relief to most—if not all—domestic petitioners. They might argue that low-priced imports, whether fair or unfair, benefit consumers and the economy as a whole. But of course we cannot and do not apply this standard to our trade laws. Our domestic industries and workers have a right to expect fair trade, and in the long run our economy would pay dearly for unfair trade in the form of imported unemployment, a distorted world economy, and the loss of our still preeminent position among industrialized countries.

Plainly, the right standard is somewhere between always providing import relief and never providing import relief.

Another option would be to measure our trade laws by how well they have been administered. Of all our trade laws, our antidumping and countervailing duty laws are the most frequently used and affect the most U.S. companies, products, and probably the greatest dollar volume of imports into the United States. Since the International Trade Administration administers those laws, I can give you some facts in this regard.

In 1982, we have coped with not only the largest number of antidumping and countervailing duty petitions ever filed, but also the most complex issues ever considered in antidumping and countervailing duty investigations. Despite this explosion of activity, we met all the statutory deadlines. Many are aware of the 79 antidumping and countervailing duty petitions involving European steel exports, but we also had 47 petitions involving steel exports from 9 other countries, and 90 petitions involving other products. That last number, without any of the steel cases, is still significantly higher than any caseload in history.

At the same time that we were handling our largest caseload ever, we were presented with some of the most complicated and important issues ever addressed. The steel countervailing duty cases blazed new trails in analysis of domestic subsidies. Scores of complex issues were faced head on, among them: Valuation of grants to specific enterprises or industries; grants to cover operating losses; preferential loans and loan guarantees to both creditworthy and uncreditworthy companies; equity infusions; and research and development loans and grants.

The Canadian railcar case involved an export credit subsidy, another area never before addressed. To value the subsidy in the very complex business transaction involved, ITA, with assistance from investment bankers and financial analysts, used a sophisticated options pricing model.

In other words, on a standard of how well our laws have been administered, our dumping and countervailing duty laws provide strong evidence that complex statutes have been administered effectively.

Another standard might be whether our trade laws cover all of our trade problems. With a few exceptions that I will come to in a moment, I think the answer is that they do.

I believe the best way to judge our trade laws is by a combination of these standards; whether our laws create and maintain the reality and the perception of fair competition and a climate for U.S. competitiveness in our own market and abroad. By this standard, our trade laws must give relief for unfair trade practices, and for serious import injury where a period for adjustment is warranted. They must be well administered, and they must deal with our trade problems.

Fundamentally, I think our laws measure up well.

But we can, I think, make some administrative changes that would make a significant difference in how effective our trade laws are. I do not mean that our trade laws need to be overhauled. But there are some improvements to be made and some gaps that we may be able to close, all in ways consistent with our international obligations.

We have been looking at a number of areas of possible improvement in the way our dumping and countervail laws work.

First, we are looking at ways of ensuring greater access to the antidumping and countervailing duty laws. Import Administration already asssists small petitioners who want to file a dumping or countervail case. There may not be a great deal more that can be done in the nature of direct assistance, but we think that small petitioners will be particularly benefited by efforts to make the whole procedure simpler and less expensive.

Second, we are reviewing ways to simplify the dumping and countervailing duty investigation methodology, to eliminate some unnecessary complexities in the calculations. We think such simplification can be accomplished without sacrificing the integrity of the process. A less burdensome process will benefit petitioners, respondents, and not least the stretched resources of Import Administration.

High on our priority list for simplification are our current compliance procedures under section 751. These are currently much more burdensome and complex than the investigation procedures themselves, and impose burdens on the parties year after year.

Another of our priorities is to concentrate judicial review in one proceeding. The law now provides that virtually all preliminary decisions by ITA or the ITC are subject to interlocutory review. Given the short statutory deadlines, few—if any—interlocutory reviews are concluded before they are mooted by superceding final determinations. Most merely waste private and government resources and add greatly to the costs of these proceedings. Since judicial review is available on all aspects of our and the ITC's final determinations, I see significant advantages to reducing interlocutory review.

We are also exploring how to expedite relief is some circumstances. Delay is sometimes the equivalent of denial. If such delay is occuring under our trade laws, we should take steps to prevent it. The key to expediting relief is not to shorten statutory deadlines, however. A good example is the 85-day statutory deadlines for preliminary decisions in countervailing duty investigations. The first 20 days are devoted to determining whether the petition is adequate and the investigations should be initiated. Five more are required to prepare a custom-tailored questionnaire for the foreign government to complete. Where the foreign government is totally cooperative in gathering the information to respond to our questionnaire, it still takes at least 40 days, and often longer, for that response to be returned to us for analysis. That leaves at best 20 days, 5 of which must be devoted to writing the preliminary determination and reviewing it. That leaves a mere 15 days for analysis.

I believe we should not try to speed relief by squeezing an already compressed investigation timetable.

The "threat of injury" concept has not prehaps yet been developed to where it could be especially significant for industries with rapid technological change and product development—where relief may now come only after the product in question is obselete and a new problem or product has appeared. But in this area, we must proceed very cautiously.

We are also looking at ways to ensure that our countervailing duty law effectively covers various foreign practices that may not have been contemplated when the law was written, or where there may be ambiguity as to the coverage of the statute. A number of cases in the past year have demonstrated that the novelty or subtlety of a subsidy practice will not give it immunity from countervailing duties. But our international competitors are inventive at devising new trade-distortive practices. When those trade-distortive practices are countervailable subsidies, we want to ensure that our countervailing duty law reaches them. At the same time, we have to recognize that our countervailing duty law cannot be stretched to cover every new trade problem that emerges. Some new—or newly identified—practices should be dealt with under, or in combination with, our other trade laws.

A significant area for us to focus on is industrial targeting, by which I mean a government-directed or assisted program to artificially enhance a particular industry's international competitiveness. Targeting may encompass a complex variety of practices which, individually, are sometimes fair and sometimes unfair. The practices often include an insulated home market, a range of fiscal and monetary benefits for the foreign industry, a relaxation of the country's own antitrust principles, and structuring of the industry to suit government export targets.

The targeting issue is further complicated by the fact that targeting practices and their effects shift over time. For example, in case of a recently targeted industry, the foreign targeting practices are ongoing, but no targeted exports may yet have reached U.S. shores. Yet in the case of an industry targeted in the past, the effects of the targeting on the U.S. market may be serious and continuing, long after the foreign practices have ceased. In short, there may be targeting practices before there are effects, and effects long after the practices have stopped.

Just as targeting itself is complex, so is the question of how we deal with it—and whether, or the extent to which, our trade laws are the appropriate and most effective means for doing so.

As we work with the Congress and the private sector in the coming months on how our trade laws might work more effectively, we will look forward also to exploring with them the questions posed by industrial targeting.

Chairman GIBBONS. Thank you.

Our last witness on this panel is Mr. Alfred Eckes, Chairman of the International Trade Commission.

STATEMENT OF HON. ALFRED ECKES, CHAIRMAN, U.S. INTERNATIONAL TRADE COMMISSION, ACCOMPANIED BY MICHAEL STEIN, GENERAL COUNSEL

Mr. ECKES. Thank you, Mr. Chairman.

I will offer a summary of my summary. I believe you all have copies of my prepared statement.

As members of this subcommittee know so well, we are not a policymaking agency, but rather an independent one with factfinding and quasi-judicial functions. Consequently, it is somewhat inappropriate for me to take a position on whether we ought to amend the laws to make it easier or more difficult for petitioning firms or industries to obtain relief from import competition. These are properly the policy issues for you Members of Congress.

My own proposals are somewhat more technical in nature. I will leave the radical streamlining to others. Let me turn to several specific provisions of the law that were mentioned in your invitation to testify, specifically section 201, the so-called escape clause, which is designed to provide temporary relief enabling domestic industries to adjust in orderly fashion to increased imports.

The Commission has authority under the statute to recommend relief to the President, but the President actually decides whether to accept the affirmative determination from the Commission that increased imports are a substantial cause or threat of serious injury to a domestic industry.

Since this provision was revised in 1974, the Commission has conducted 48 investigations resulting in 28 affirmative and 19 negative determinations. One case is pending. Where the Commission recommended import relief, the President granted it in nine instances.

Since December of 1980, when the Commission rendered its negative determination on automobile imports, the number of cases under the statute has fallen from an average of seven to one or two per year. We have issued a determination on motorcycles. Next week I believe we will be voting on the specialty steel case.

In my prepared statement, I offer several specific points. Let me quickly summarize those.

The Commission, I think, needs the full 6 months allowed under the current law to conduct an investigation. That time limit should not be reduced, though we try to move more quickly than 6 months whenever we can.

The fast track procedure for seasonal or perishable products may be desirable. However, the requirement that industry develop an adjustment plan as part of its petition for relief probably would make it even more difficult for domestic industries to qualify for import relief.

Let me make a few comments about title VII, dealing with countervailing duties and antidumping relief. Here, as Secretary Olmer has mentioned, the Commission shares responsibility for administering these laws with the Department of Commerce. The procedure is complex. It is a bifurcated process in which the Commission seeks to determine whether the domestic industry is materially injured by reason of unfair trade imports and commerce, on the other hand, seeks to determine whether the articles in question are subsidized or sold at less than fair value.

When both agencies make affirmative determinations, duties are imposed to offset the subsidy or less than fair value margins. I should emphasize that this is a quasi-judicial procedure in which the parties can and do appeal determinations to the U.S. Court of International Trade.

The President, incidentally, has no direct responsibility for relief under this statute, as he does under the escape clause. As of now, the Commission has made a large number of determinations under this revised law, which took effect in 1980. There have been 137 preliminary cases involving allegations of subsidies. Of these, 47 percent led to affirmative determinations within the Commission.

With regard to dumping, the Commission has handled 115 preliminary cases; 73 percent of those were determined affirmatively at the beginning or preliminary stage. The vast majority, incidentally, did involve steel.

In general, I think these procedures are working reasonably well from the Commission's vantage point. The deadlines are tight, but we have managed to adjust.

I do have several specific suggestions for making the procedures less complex, costly, and time-consuming. First, let me note that the current preliminary investigations do provide an indication in 45 days whether the case should be terminated or continued. If the Commission had not terminated some 53 percent of all subsidy cases and 27 percent of all antidumping cases in 45 days, all of the trade affected by these cases would have remained under a cloud for an extended period of time. The parties involved and the Government would have incurred considerable additional expense.

Without a doubt, the provision for court review has increased considerably the cost to petitioners and respondents in dumping and countervailing duty cases. As I said before, many cases are appealed. Although it is too early to develop meaningful won and lost data as far as the Commission is concerned, the Commission has not yet been overturned under the revised law.

This suggests to me that the provision for extensive court review has significantly added to the cost of dumping and CVD investigations without affecting the results of Commission determinations.

Last, I wish to discuss briefly section 337, the statute addressing alleged unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale. Most of these cases—and incidentally, this is our boom area at the present time—involve patents, copyrights, and trademark matters. They are also quasi-judicial investigations.

The products under investigation have ranged from such things as video games and Rubic's cubes to caulking guns and computers—a wide variety. The Commission may order a respondent to cease and desist, and has the power to exclude goods from the U.S. market. These orders are subject to presidential disapproval for policy reasons.

In my written statement I offer some technical proposals for reducing costs, clarifying language, and expediting procedures. I will not review that list at the moment, but I would like to make a general comment about one troubling area in section 337, which involves the issue of defining the domestic industry.

What does it involve? Increasingly we have found that U.S. firms are sourcing-out production and importing goods produced abroad. The Commission has a very difficult responsibility deciding whether a domestic industry is eligible for relief under this statute if it produces the merchandise overseas, but performs certain functions in the United States such as packaging, marketing, and advertising.

In the absence of clear guidance from the statute and legislative history, the Commission has been attempting on a case-by-case basis to apply the law, which was written originally more than 50 years ago, to modern circumstances of trade.

In conclusion, let me make one general observation that is not in the prepared testimony. Over the last decade, the United States has established a quasi-judicial approach to weighing import relief claims. The system is open and fair. Testimony in these hearings may also show that this approach is complex and costly.

The difficult issue from my vantage point is how to streamline and cut legal costs without, at the same time, sacrificing the openness and fairness of that system.

Mr. Chairman and members of this subcommittee, I would be delighted to answer any questions that you might have.

[The prepared statement follows:]

Statement of Alfred Eckes, Chairman, U.S. International Trade Commission

Good morning Mr. Chairman and members of the subcommittee. Thank you for this opportunity to discuss some of my views concerning possible improvements in the Nation's trade laws. As you know, the Commission is an independent Government agency. One of our most important functions is to provide assistance to Congress of a technical and fact-finding nature. Since we are not a policymaking agency, but do have some quasi-judicial functions, it would be inappropriate for me to take a position on amending the trade laws to make it either more difficult or easier for petitioning firms or industries to obtain relief from import competition. Congress writes the trade laws; the International Trade Commission helps to administer these laws on a case-by-case basis. Nevertheless, to assist your review of trade remedy laws, I would like to discuss briefly our experience administering the laws and suggest several revisions that would, in my opinion, make them easier to administer and less costly to the parties involved.

Most of my comments and suggestions relate to import injury investigations (sections 201 and 406) and unfair trade investigations (title VII and section 337). The Commission has had no significant role in section 301 investigations, involving the enforcement of U.S. rights in international commerce. Section 301 cases are primarily the responsibility of the U.S. Trade Representative, and thus we have had no first hand experience on which to base recommended revisions to this provision.

Let me turn to the so-called escape clause, section 201, which is designed to provide temporary relief enabling domestic industries to adjust in orderly fashion to increased imports. As you know, the Commission has authority under this statute to recommend relief to the President, but the President decides whether to accept the Commission's affirmative determination that increased imports are a substantial cause or threat of serious injury to a domestic industry. Since this provision was revised in 1974, the Commission has conducted 48 investigations, resulting in 28 affirmative and 19 negative determinations. One case is pending. Where the Commission made affirmative decisions recommending import relief, the President granted it in nine cases.

Although the Commission has conducted 48 investigations under the revised section 201, most of these occurred during the period from January 1975 to December 1980. During this period the Commission averaged more than seven investigations annually. Since 1980, when the Commission rendered its negative determination on automobile imports, the number dropped to an average of one per year. In 1983 the Commission has completed its work on a section 201 involving motorcycles and will vote soon on another investigation relating to specialty steel.

There have been suggestions that the six-month period allowed for the Commission to conduct section 201 investigations be reduced. I urge the Subcommittee not to reduce the time allowed for these investigations. It is true the Commission has completed section 201 investigations in fewer than 6 months in the past and will endeavor to do so when it is appropriate. However, a requirement for completing these cases—many of which are highly complicated and involve imports from a large number of countries—in less than 6 months would, in some instances, have an adverse effect on the scope and quality of our research and analysis. This is particularly true in investigations where the Commission makes an affirmative injury determination and must then develop a remedy recommendation within the prescribed time limits.

Another area of concern to some is whether the present language of section 201 makes it too difficult for a petitioning industry to obtain an affirmative finding from the Commission during an economic recession. Those who practice before the Commission debate with eloquence and passion whether Congress intended that the Commission could consider a recession a more important cause of injury to a domestic industry than increased imports. Whether Congress should modify the law to guide the Commission is a policy matter, and therefore not a subject I should address.

A possible change in section 201 that frequently has been discussed is the addition of a provision that would permit "fast track" investigations for seasonal or perishable agricultural products. If such a change is made, I recommend that for perishable agricultural products the President and the Secretary of Agriculture have responsibility for an initial determination to grant interim relief pending an injury determination by the Commission. Such a procedure would resemble investigations under section 22 of the Agriculture Adjustment Act. In my view the Secretary of Agriculture, whose department gathers extensive date on agricultural crops and markets, is in a better position to make a judgment on the need for emergency import relief for producers of such seasonal or perishable products. After the President and the Secretary of Agriculture have responded to the request for emergency action in these cases, the Commission can proceed with its investigation under section 201. If the Commission makes a negative determination, the relief provided on an interim basis would be terminated.

Some have suggested also that the Commission expand its efforts to develop information on the plans of petitioning industries to adjust to import competition. According to this school of thought, an acceptable adjustment plan should be a condition for obtaining import relief in section 201 investigations and implementation of the plan should be a condition for an extension of import relief in section 203 investigations. In recent years the Commission has increased its efforts to obtain more information on industry adjustment plans in accordance with the statute (section 201(b)(5)). But there is no legal requirement that an industry develop such a plan prior to seeking import relief. Those seeking this change should recognize that if the statute is amended to require an industry adjustment plan before relief is granted, such a modification will make it even more difficult for industries to qualify for relief under the so-called escape clause.

Now I turn briefly to section 406, dealing with market disruption from Communist countries. In these cases, if the Commission determines that increased imports from a Communist country are causing market disruption, the President may take action to limit imports from the country involved. The Commission has had only limited experience with this statute. Since the Trade Act of 1974 was enacted, there have been only nine section 406 investigations. There were two affirmative determinations; one split determination; and six negative determinations. In both affirmative cases, the President denied relief. The number of market disruption cases anticipated when the law was enacted has not materialized. Consequently, I have no suggestions at the present time for modifications to this statute.

Now, I would like to offer a few comments on title VII, the antidumping and countervailing duty laws. As members of the subcommittee know, the Commission shares responsibility for administering these laws with the Department of Commerce. It is a complex, bifurcated procedure in which the Commission seeks to determine whether the domestic industry is materially injured by reason of unfair trade imports and Commerce seeks to determine whether the articles in question are subsidized or being sold at less than fair value. If both agencies make affirmative determinations, duties are imposed to offset the subsidy or less than fair value margins. This is a quasi-judicial procedure, in which parties can appeal determinations to the Court of International Trade. The President has no direct responsibility for relief under Title VII, as he does under sections 201 and 406.

As of now, the Commission has made a large number of determinations under the revised law, which took effect in 1980. There have been 137 preliminary cases involving allegations of subsidies (section 701). Of these, 65 (47 percent) led to affirmative determinations. One hundred fourteen final investigations have been conducted, resulting in 29 affirmatives, 59 negatives, and 26 cases terminated or suspended. With regard to dumping investigations, the Commission has handled 115 preliminary cases. Seventy-nine (73 percent) were affirmative. There have been 44 final investigations of dumping; 18 ended with affirmative votes; 7 negative; and 19 were terminated or suspended.

Because the subcommittee is interested in ways to make our trade remedy laws "less complex, costly and time consuming for all parties," I will comment on several suggestions to achieve this end in title VII investigations. A number of petitioners have been critical of the costs associated with preliminary investigations. It has been suggested that the Commission could make preliminary determinations solely on the basis of information presented in the petitions for relief. I do not agree with this point of view. If the Commission were required to make its preliminary determinations solely on the content of petitions, it rarely would make a negative determination. Consequently, many investigations would continue through the final investigation stage, which takes from 7 to 12 months. But with a thorough preliminary, the Commission has terminated in 45 days 53 percent of all preliminary subsidy investigations filed and 27 percent of all antidumping investigations. If the Commission had not terminated these investigations following thorough preliminary investigations, all of the trade affected by these cases would have remained under a cloud for an extended period of time. Meanwhile, the parties involved and the government would have incurred consideable additional expenses.

One reason the costs to petitioners and respondents in dumping and countervailing duty investigations have increased greatly relates to the provision for court review of Commission decisions. A number of the Commission decisions are appealed to the Court of International Trade. At the present time there are 16 title VII cases on appeal, including a group of steel cases consolidated as one appeal. Although it is too early to develop meaningful won and lost data because so few appeals have been resolved, the Commission has not yet been overturned under the revised law. Thus, it appears that the provision for extensive court review in the Trade Agreements Act of 1979 has significantly added to the costs of dumping and countervailing duty investigations without affecting the results of Commission determinations.

I should mention two technical issues in passing. Many practitioners debate at length in our hearings whether the Commission should cumulate subsidized and/or dumped imports from two or more countries in determining whether dumped and/or subsidized imports are the cause of injury to a domestic industry. There also has been some debate whether the Commission should limit its material injury investigation to a consideration of the impact of subsidized or dumped imports on the domestic industry, or whether the Commission is to consider not only the presence of these imports in the U.S. market, but also the amount of the subsidy and/or the amount of the less than fair value sales margin when it considers the impact of such imports on U.S. industry. These are complicated issues, involving not only domestic law but consistency of that law with international agreements. While some parties would undoubtedly appreciate some clarification of congressional intent, the present situation is not unworkable.

Next, I wish to discuss section 337, the statute addressing alleged unfair methods of competition and unfair acts in the important of articles into the United States, or in their sale. Most of these cases focus on patent, copyright and trademark matters. They are quasi-judicial investigations, conducted in conformity with provisions of the Administrative Procedure Act, and must be completed within 1 year (18 months for more complicated cases). The Commission may order a respondent to cease and desist from engaging in unfair practices. The Commission also has the power to issue exclusion orders, barring products from the U.S. market. These orders are subject to disapproval by the President for policy reasons. Commission determinations may be appealed to the Court of Appeals for the Federal Circuit.

Since this statute was revised in 1974, we have completed 124 investigations. Thirty-eight led to affirmative Commission determinations. Of these the President took no action to disapprove in 30 cases. In three affirmatives, the President did disapprove. In three others, action is pending. In two other cases, no remedy was recommended. Also, the Commission made 30 negative (no violation) determinations, and terminated or suspended 56 other cases.

To reduce the costs of litigation under this statute, I recommend that the qualifying language of section 337(a) requiring an industry to be "efficiently and economically operated" be deleted. Despite more than 50 years of experience with litigation concerning this phrase, the Commission has never found a complainant not to be "economically and efficiently operated." Nonetheless, there has been considerable expense to parties and the government in almost every case due to the discovery of facts related to the issue, trial presentation, briefing, and consideration by the administrative law judge and the Commission. On occasion respondent's counsel may have used this statutory phrase as an opportunity to raise complainant's litigation costs. Moreover, this phase seemingly imposes an incongruous burden on some complainants. In cases where the complainant argues that allegedly unfairly traded goods are preventing the establishment of a domestic industry, the complainant must try to show that the industry which is prevented from being established is (or would be) efficiently and economically operated. This suggested change, if enacted, would not affect the record on the injury issue because the issue of injury and the issue of efficient and economic operation are quite different.[1]

Second, I suggest that Section 337(f)(1) be amended, and the phrase "In addition to or" be inserted at the beginning of this subsection. Such amending language would clarify that the Commission has the authority to issue both exclusion and cease and desist orders for the same violation. There are circumstances where ordering both remedies for one violation would be in the public interest. For example, a cease and desist order prohibiting a domestic respondent from selling the product may be appropriate when the infringing product has been stockpiled and an exclusion order may be appropriate to exclude future shipments of the infringing product. When the Commission determines that both remedies are necessary, there should be no legal question that the Commission has authority to order such complete relief.

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[1] In determining injury the Commission has looked at such indicia as present or projected number of lost customers, market penetration of the imported products, price suppression, foreign capacity and the present or projected impact of importation on production, investories, sales and profits. In contrast, the Commission's focus on the efficiently and economically operated issues has generally been on such facts as (1) use of modern equipment and production techniques; (2) low ratio of supervisory to production employees; (3) strict quality control programs; (4) research and development programs related to the product in issue; (5) employee educational plans; (6) employee incentive compensation plans; and (7) substantial marketing organization to sell and service the goods in question. Thus, the evidence considered is quite different on the two questions and deletion of the efficient and economic operation would not detract from the Commission's injury determination.

Third, several clarifications seem warranted with respect to the appropriateness of Presidential review of the underlying ITC decision as well as the remedy determination. Recently USTR has commented on Commission injury determinations and our consideration of the nature of the domestic industry. This practice appears contrary to the legislative history of Section 337(g)(2). The Senate Report on the 1974 Amendments stated: "The President's power to intervene would not be for the purpose of reversing a Commission finding of a violation of section 337, such finding is deterined solely by the Commission, subject to judicial review." S. Rept. No. 93-1298, 93d Cong., 2d Sess. 199 (1974). The legislative history of this provision makes clear that Presidential disapproval power is limited to "policy reasons," defined in the Senate Report as the impact of the Commission order on "United States foreign relations, economic and political." Id. The Senate Report states further that the President could also decide what impact the ITC order might have upon the "public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers." Id. should emphasize that these public interest factors—the ones considered by the Commission itself under section 337(d)—do not encompass the underlying determination of whether there is a violation of section 337.

I recommend clarification by the following changes:

In line 3 of (g)(2), add "and action" after "determination" in lines 2-3; delete "determination" in lines 3-4 of (g)(2) and add "action taken under subsection (d), (e), or (f) of this section"; and delete "determination and the" in line 5 of (g)(2):

(g)(2) would then read:

If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination and action, the President, for policy reasons, disapproves such action taken under subsection (d), (e), or (f) of this section and notifies the Commission of his disapproval, then . . . such action taken under subsection (d), (e), or (f) of this section with respect thereto shall have no force or effect.

Fourth, the question recently arose whether the President's disapproval for policy reasons for orders against certain parties, while expressing no disapproval of (and implicitly approving) other Commission action in the same investigation, necessarily invalidates all Commission determinations and actions in that investigation. To prevent future issues regarding section 337(g)(2), I recommend the following clause be added to the end of the provision: "unless modified by the Commission subsequent to Presidential disapproval provided for in this section."

Fifth, I suggest that section 337(c) be amended, and language be added to set a 60-day time limit to appeal. Since the deletion of the time for appeal language of section 337(c) in 1979, the open-ended opportunity for further litigation has created considerable uncertainty for affected businesses.

Sixth, I shall call the subcommittee's attention to another controversial issue debated by attorneys who practice before the Commission on section 337 cases. It involves the nature of the domestic industry. Stating the question succinctly, does a domestic industry eligible for relief under this statute exist if the actual production occurs overseas but certain elements, such as design, engineering, packaging, marketing and advertising are done in the United States? In the absence of clear guidance from the statute and legislative history, the Commission has been attempting on a case-by-case basis to apply to statue, which was written originally more than 50 years ago, to modern circumstances of trade in which U.S. based firms increasingly source out elements of production to foreign suppliers. Incidentally, I might add that some of these same questions have arisen in title VII investigations as well.

Finally, there is one item that impinges both on the Commission's ability to complete its investigations in timely fashion, and upon the Commission's independence from the executive branch. That is the portion of the Paperwork Reduction Act of 1980 requiring that the Office of Management and Budget approve Commission questionnaries before they are sent. Where Commission investigations are subject to statutory time limits, OMB has provided generic clearances, so that we can get our work done. But this is a matter of grace, and can be revoked at any time. With respect to our investigations under section 332, many of which are requested by this committee and the Senate Finance Committee, OMB has not granted generic clearance, and the Commission must submit proposed questionnaries for the very time-consuming and sometimes restrictive clearance procedure. We can assume a delay of 40 to 60 days in the commencement of these investigations; up to 90 days clearance time is permissible under the statute. Moreover, by controlling the questions we can ask, the executive branch can shape our investigations and occasionally has made substantial alterations.

If this matter is of concern to the subcommittee, it may wish to seek a statutory remedy. As you know, section 332 factfinding is often a prelude to action under the other trade remedy law statutes.

Mr. Chairman, that concludes my remarks. I will be pleased to answer any questions that you or members of the subcommittee might have. I will also be pleased to make available the Commission staff to assist the Subcommittee and its staff in developing any of the points that I have discussed this morning.

Chairman GIBBONS. Well, I thank you for your detailed testimony.

Let us go back now to Ambassador Smith. You have just returned to this country after 3 years of having been stationed as our representative to the General Agreement on Tariffs and Trade. I thought we might begin by picking your mind to find out as much as we can about that. I noticed in the morning newspaper that apparently some informal discussions are going on within the administration and with our various trading competitors around the world about the General Agreement on Tariffs and Trade.

I think it is fair to say that most Members of Congress look upon the idea of the GATT as being a constructive idea, but in practice it has not turned out to be as effective as we would perhaps hope. How can the GATT be made more effective? What are your observations, having returned from 3 years with the GATT?

Ambassador SMITH. Thank you, Mr. Chairman. First of all, I too read that newspaper article this morning. I do not think that article reflects the administration's views or is accurately stated.

In looking back at more than 3 years in Geneva, we have seen in my view two problems, one in the short term, one in the long term. The short term problem is one that I alluded to earlier, that is with regard to making the dispute settlement process work better. I do not mean to say by that that the United States every time it takes a case to a dispute settlement process in Geneva can or should expect that it will always—if I may use the word—win. But I think we do have a right to expect that the panel process will work to the degree that decisions are made, and if the decisions are made they are well based on good GATT theology.

I have two cases in point. I referred earlier to the wheat flour case. The problem with that is obviously that the panel did not make a decision, and we are left just where we were before we began the process.

The second element has to do with making good GATT decisions as exemplified with the case that the United States brought before the GATT several years ago regarding the handling of soybeans. In that case, what was disturbing was not so much that we lost, but that the law or precedents which they cited were seriously flawed, so much so that the GATT Council itself had to turn down the adoption of a panel report.

The other, more long-term reflection that I have, sir, is that the GATT must be made to appear to the world as if it is handling the issues not only of the past, or indeed the present, but obviously the future. This is a contractual organization. It has, as most people know, never been ratified except by one country. And yet it is a contractual organization of some 88 contracting parties now.

It depends largely on the political will of its contracting parties to move the issues forward, and if that political will is not there the GATT will stand still. And in trade terms I think it is a fairly well-known statement that if you stand still in trade you move backwards.

The desire of this administration across the board is to strengthen that institution. It is the only one we have and probably the only one we are likely to see in our lifetimes. It has worked, but it must move forward. We cannot just worry about, for example, tariffs. Tariffs are important, but they are less important today than they were, let us say, 20 years ago.

As you know very well, they spent a great deal of time during the Tokyo round on the nontariff barrier area. They have just gotten into that. But there are other areas that are now deserving of considerable attention.

Under Secretary Olmer referred in one aspect of his testimony to the high technology area. This is something that we must face, that is, the international institution and the participants must face. Otherwise we will find barriers erected in these areas, these areas which are very important to us in terms of our growth in exports in the future. And the GATT must respond to these challenges.

Thank you, sir.

Chairman Gibbons. Well, in your tour of duty with the GATT as our representative, did you detect that other countries were dissatisfied with the operation of the GATT? I am talking about other major industrialized trading countries.

Ambassador Smith. Yes and no. Some countries felt as we did, that the organization could be pushed, if you will, or pulled forward. Others were perfectly willing to see it stand pat.

I think some of this was colored during the time that I was there by their current domestic economic situations. Some countries would say that this was not the time to move forward in new fields, in new areas. And I would think that most of the major players were aware that the institution had to move forward and were and are supportive of doing that.

Chairman Gibbons. Mr. Olmer, your agency is generally responsible for enforcement of antidumping and countervailing duty cases. This means you are often in contact with the general public.

How can we cut down the cost of these actions? I run into some of the largest businesses in America that just say, "we cannot afford competition, it costs too much money, it takes too long".

Are their criticisms accurate? What do you feel can be done?

Mr. Olmer. I think their criticisms are accurate. Maybe one of the things we can do is encourage the training of more engineers and mathematicians and fewer lawyers. We can, I think, do a good deal.

Chairman Gibbons. We need those people in government or industry?

Mr. Olmer. Well, we always have to have lawyers in government, Mr. Chairman, to deal with those outside.

In all seriousness, I think it is part of the conventional wisdom that the United States is the most litigious nation on Earth in the history of mankind, and the more laws we write the more people grow up to purport to interpret them in the way they were intended to be written and implemented.

We have to deal with the reality of that situation, and the more people that avail themselves of our law, I think it is in part a reflection of a genuine effort to seek relief that the Congress intended. And I have no real quarrel with that.

But with regard to your specific question, there are things that can be done to simplify the procedures so that the small and medium-sized businessman does not have to spend that million dollars. The simplification process is of a technical nature, and Mr. Horlick will be speaking later on today regarding it.

But there are a number of criteria in the act and standards that must be met, that perhaps could be aggregated rather than made as specific as they are now, including, in particular, our compliance procedures for the annual administrative review process.

The danger is that as we think we simplify, some would argue that we are not being sufficiently precise, and that their rights, on whatever side of the issue they happen to fall, are not being properly listened to and afforded an opportunity to be heard. But that is a balancing process I think we are going to have to work with your committee on over the course of the next several months.

Chairman GIBBONS. Well, frankly, with our small staff and with the myriad of duties that Members of Congress have, we are going to have to look to the executive branch to help us with this problem.

In that line, is there any ongoing dialog, any formal dialog within the administration on what perhaps may be done about these laws?

Mr. OLMER. Yes, sir, and there has also been a dialog with the private bar in the trade law community to develop a series of propositions for our consideration, that we will be prepared to discuss with you in the not too distant future.

What we are doing ourselves internally is not solely out of whole cloth or out of what we only perceive, but on the basis of recommendations that have been submitted to us by attorneys on both sides of each of the questions that we have confronted. We have had a lot of experience in the past year, perhaps proportionately more with respect to the steel industry than any other.

Those steel cases were not only monumental, but groundbreaking in a number of areas, and we learned a great deal that I think will help us in the long run simplify it and make access to our laws more affordable for the small- and medium-sized businessman.

Chairman GIBBONS. Well, I have some other questions, but I realize there are other members who want to ask questions. We will come back.

Mr. Schulze?

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. Olmer, I think you put your finger on it when you talked about the perception. There is a widespread perception in our country in the business community that our trade laws are not working, are not being enforced. Now, whether this is accurate or not, that perception is there. And I guess my general first question is, what do we do about that, now that you say that we have to aid the small- and medium-sized businesses, and I agree wholeheartedly? And I presume from what you said that those recommendations will be forthcoming.

But this perception is there, and making some relatively minor changes I do not think is going to affect that perception.

Mr. Olmer. Well, sometimes the perception is not justified. I was roundly criticized over the phone by a distinguished member of Congress for failing to sharply enforce our trade laws in the antidumping/countervailing duty area and never finding on behalf of the U.S. petitioner.

Well, I knew at the moment I got the call that in general that was not true, but I went ahead and took a look at the record over the last 18 months, and the statistics were shockingly in favor of U.S. petitioners in terms of affirmative findings. But when I went beyond that and then went back and said, well, this is the record, the answer was, but you did not find enough. I mean, you found a subsidy of 2.3 percent and that is not going to make the competitive difference that the U.S. petitioner needs.

Then I have to go back to my statement at the beginning. The trade laws are not meant to cure all ills. They are meant to provide by and large a roughly even playing field on which fair competition can exist. And in the final analysis I am afraid the question of whether our trade laws do an adequate job of evening that playing field is going to be highly subjective.

I feel that to a certain extent the business community, represented by the legal community, frequently are arguing the lawyers' case. That is to say that the merit is not entirely with them.

That is not an adequate response to the very troubling question that you pose, sir. It bothers me deeply that there is such a perception. I agree with you, it does exist, and I know of no better way to do it than to effectively enforce our laws and do it within the statutory guidelines, then just make darn sure that the people we hire to make the calculations—that would fill up practically this room—are motivated and are as objective and qualified as we can find. And we have done that.

Mr. Schulze. I would agree. However, as I travel around the country there is very little understanding of that point of view. It is almost reaching the point of violent opposition.

I wonder if either of the other two gentlemen would have any comment?

Mr. Eckes. Congressman, I might add one thought here. Perhaps too much has been expected of title VII, dealing with unfair trade. My perception is that, while title VII has been applied, and I think from our standpoint any problems that we have had could be remedied with minor changes in the law, perhaps what many of our industries are experiencing are not the problems of unfair trade, but problems relating to fair trade. Namely, they have lost comparative advantages, and to the extent that U.S. import relief law can provide assistance, section 201, the escape clause, is the way to go.

But there have not been many cases brought under that statute in recent years.

Mr. Schulze. Mr. Smith, do you have any views on that?

Ambassador Smith. Well, you will excuse me. I have not spent a great deal of time on this particular aspect during my tenure in Geneva.

Mr. Schulze. Well, the European perspective?

Ambassador Smith. No, not a European perspective, but perhaps a different slant. It is just a simple observation that there are those who, as the Under Secretary has said, have wanted increased speci-

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ficity all the time, and then find out later that this increased specificity is either time-consuming or resource-consuming, both human or financial.

It is a dilemma that we are perhaps inevitably caught in, in the sense of trying to do, as the Under Secretary says, the fairest possible job to both sides.

Mr. SCHULZE. If GATT does not work—and again, there seems to be the perception that GATT does not or is not working—should we be active in developing another framework? I do not know that we have to be totally wedded to GATT and just say, it is written, that therefore we are going to stick with it through thick and thin.

Why do we not really seriously consider developing another framework?

Ambassador SMITH. Well, I do not think it is entirely accurate to say that GATT has not worked. It has worked in many, many ways for the last 35 years. The problem is certainly internationally; some would say that it is a bit paralyzed at the present moment, because it does not quite know where it should go. But it is unfair to say the GATT—the GATT is only made up of 88 contracting parties.

So what you really have to ask yourself is, are 88 contracting parties willing to take the issues forward?

Mr. SCHULZE. You put your finger on it earlier when you said the political will is necessary. I do not see from the results of the GATT Ministerial that that political will is there. And if there is some way we can build a fire under it and put it there, OK. But if not we should look for another device.

Ambassador SMITH. I certainly believe it is a question of political will. My own belief is that you could not negotiate another GATT or erect another institution in 1983. It would become an institution of the lowest common denominator.

Mr. SCHULZE. It could be the highest common denominator.

Ambassador SMITH. I would venture to say, the likelihood is that it would not.

Mr. SCHULZE. While we are on it, Ambassador Smith, at the Ministerial one of the things which did emanate from that meeting as to dispute settlements was to not block the panel reports. How is that working out and what are you views on it?

Ambassador SMITH. I wish I could report great success, but the irony is that the country which actually initiated the concept of improving the dispute settlement mechanism in order to avoid getting into situations of blocking is ironically now involved in blocking a report being adopted before the Council.

We went around and around on this issue. As you know, we felt the two participants in the process should obviously have the right to argue and try to persuade people with their arguments during the Council process, but that at the end of the day they should step down and let the Council or the code committee make its decision.

The European Community in this instance did not agree 100 percent and we attempted a compromise. I would say that the jury is still out as to whether the intent will in fact be carried out.

I will be better equipped to give a more complete answer in a couple of months when some of the cases come forward.

Mr. SCHULZE. It looks at this point as though even one of the minor things that came from the GATT Ministerial may not come about. Is that fair?

Ambassador SMITH. I would simply say it is too early to judge at the present time. There are certain cases before the Council or before panels which report to the Council which have not yet come forward. It will be interesting to see if that spirit of not blocking will become a fact.

Mr. SCHULZE. Mr. Olmer, you discussed the threat of injury concept, which I think is extremely important, and also a very difficult area, especially when you tie it into targeting.

Do you have any thoughts on how we could make this work, how we could further define "threat of injury" so that it would be realistic and not misapplied, and yet be meaningful?

Mr. OLMER. Well, I think we have to do something that falls between the Supreme Court's standard on pornography—that is, you know it when you see it—and a requirement that we identify with great precision the criteria under which threat of injury in the context of the International Trade Commission's deliberations might be an acceptable basis on which to provide relief.

It is perhaps an area that is going to require the most careful consideration on the part of the administration and the Congress, lest there be, as I indicated, a floodgate of petitions based solely on a perception of ambiguous future injury. But it is an area that I think could lead to an expedited process. It could lead to making remedies available to a wider spectrum of Americans, not just those that are rich and powerful. And I believe that because of that it has got to be looked at very carefully.

I would like to say a word that relates to this and to what Ambassador Smith said a moment ago. After World War II the United States led the fight for freer trade. It reduced tariffs very quickly and it did that as an inducement for others to join us in expanding world trade, and it served us well.

Then we began to reduce our own nontariff barriers to further increase access to the American marketplace, and we did that out of self-interest, and that encouraged others to reduce a number of nontariff barriers.

But it seems to me that in that process, because of a perception of self-interest as well as a desire to create a better world in which free and fair trade could be practiced, we have tolerated a process in which major American markets are now satisfied to a large degree by foreign manufacturers.

And we are running out of leverage. We are running out of things which we can offer, because our barriers are down, essentially. Our markets are now widely open and available. We have relatively low tariffs, and I think a serious question is, what do we now use other than rhetoric about the greater good to come from free and open trade to encourage other countries to practice what we preach and what to a great extent they will at least in concept agree to?

Mr. SCHULZE. Perhaps I can give you somewhat of an answer to that, and that is one that I have suggested be used at the Ministerial. That is the hammer of protectionism which is rising in this country. As Mr. Smith said, if we do not move forward we are going to go backward, and we are going to go backward and protectionism is rising. And if they do not free up those markets, we are going to start. You are going to see a flood of legislation in this Congress that is going to make your hair stand on end. I am convinced of it.

I agree with what you said.

Mr. Eckes, perhaps you would want to address this.

Mr. Russo. Would the gentleman from Pennsylvania yield?

Mr. Schulze. Of course.

Mr. Russo. I don't want to be disruptive but 15 minutes on this panel by one member seems a little bit long for the rest of us. I understand the clock is not working, but if we continue at this pace we will probably be here until 10 o'clock at night trying to deal with this hearing.

Maybe it would be better if we turned the lights on and tried to restrict ourselves to 5 minutes, at least the first time through the panel. Then if members want to continue to ask another 10 or 15 minutes of questions, they should feel free to do so, but at least the members who are here and have been here have an opportunity to ask a few questions.

Mr. Schulze. It is a fascinating topic, and I did not realize the time was going by.

Mr. Russo. It is an absolutely great topic.

Chairman Gibbons. Mr. Russo.

Mr. Russo. Mr. Chairman, I will try my best to stay within 5 minutes.

Chairman Gibbons. You just go ahead and take your time.

Mr. Russo. I am going to stay within the 5 minutes.

One of the things I would like to say to you gentlemen is that, if perception is the problem, and I think it is partly the problem, and I realize that trade laws are not an excuse for lack of competition, for doing the job you need to do to compete with other countries—but the one comment I receive from my entire district, from the business community, is that all you need to do, Congressman, is to enforce the laws that are on the books. We do not need anything else. If you just let our trading partners realize that we are serious about effective enforcement of our trade laws that will solve all the problems.

Now, perception is a problem, that you are not effectively enforcing the laws, mainly I think because it takes so much time to take action. It is like the criminal justice system. I was in it for three years as a prosecutor. It is the old theory, it takes so long to bring a criminal to trial that by the time you bring the criminal to trial, the adage that crime does pay comes to fruition.

It is the same thing in trade. If you take too long to act, by the time the relief is in place the business is already gone. So dumping and subsidies, everything works, in spite of what everyone talks about, the need to encourage free trade.

I have Interlake Steel, a great firm, in my own district. It may leave the steel industry. And to me, I just wonder what the people up in the agencies think about sometimes. You look at a steelworker and you look at an autoworker and you look at some of the semiconductor firms, and maybe if you could sometimes put yourself in their place and see what it is like to be unemployed, not knowing how to put bread on the table for your children, maybe you can understand their frustration over the way we appear to be doing things.

My question to you is, realizing that, what can we do to streamline the system so you can deal with the perception problem? Not only is it the perception of our own people, but it is the perception of our trading partners, who feel that they can manipulate the system to their great advantage if they are willing to do so, realizing that we are the country that stands for free trade while they take advantage of us.

Mr. OLMER. Mr. Russo, in some specific areas I think you are absolutely right. There are a couple of cases in which it has been clear to me that the foreign exporter has learned to live with dumping and like it. It presents just a blip on the screen of the normal business practice.

But in the other areas I respectfully disagree, and the steel industry is one in particular—at least the basic carbon steel industry. That industry got relief in 5 months, and by its own admission, the basic carbon steel industry is not competitive. And its problems are by and large not just import competition or even unfair import competition, but problems of a domestic character that have to be dealt with, largely by their own devices.

But we were able in that instance to provide interim relief in a way which signaled our trading partners to knock it off, under very severe threat of substantial financial penalty, and they did do that. And that is one of the things that led to the Europeans asking—asking most sincerely, I might add—for a negotiated settlement, which we did.

Mr. RUSSO. Let me ask Mr. Smith: How many determinations do we have under section 301? I know we have certain investigations, but the final determinations are what is important. Do you know how many we have had since this administration has been in office?

Ambassador SMITH. May I ask Mr. Hathaway to answer that?

Mr. RUSSO. Sure. And also, how many remedies have you issued under section 201?

Mr. HATHAWAY. We have had a total of 38 cases filed under 301. Fifteen of those cases have been resolved. We have 16 pending, and we have 6 that have been terminated. There has only been one case where the President has recommended a remedy. That was in the border broadcasting case in which he proposed legislation which is still pending.

Mr. RUSSO. How many remedies under 201?

Mr. HATHAWAY. Under 201—Chairman Eckes has already given that statistic. There have been 9 in which the President has imposed a remedy out of the 28 cases that have had affirmative recommendations, although some of those cases involved the same industry coming back at a separate time.

Mr. RUSSO. It seems to me that one of the criticisms I hear of this administration is that it is very reluctant to use trade remedies. Would you say that is a fair criticism?

Mr. HATHAWAY. In the last 18 months in this administration, over 40 percent of all the 301 cases that have ever been initiated were initiated. There has only been one 201 case that has come in this administration and it is now pending. That is the motorcycle case. So I think that is an unfair criticism.

The actual caseload under 301 has increased dramatically back when we were discussing the 1979 amendments to section 301, we had two cases in active dispute settlement in the GATT. We have so many now we have to have flow charts to track when briefs are due and when we have a panel coming up.

Mr. RUSSO. Mr. Olmer, would you be so kind as to respond to me in writing, because I do not want to take the committee's time. In your testimony you referred to the problem of targeting and whether our trade laws are the most effective means for dealing with that problem. Could you make some suggestions on how our trade laws might better deal with the targeting issue?

Mr. OLMER. I would be delighted to.

Mr. RUSSO. Thank you, Mr. Chairman.

Chairman GIBBONS. I think it is probably a good time for us to take a break now. We have to go vote and come right back. If you will excuse us, we will be right back.

[Recess.]

Chairman GIBBONS. Our meeting will resume.

Mr. Pease.

Mr. PEASE. Thank you very much, Mr. Chairman.

I would like to direct one specific question to Mr. Eckes. I was interested in your comments about section 337. I believe it was you who said that it is one of the most active areas these days, is that right?

Mr. ECKES. That is correct, Congressman. We have had a growing number of cases, I think in part because these involve patent, trademark and copyright issues. But by seeking relief through the Commission procedures the complainant can often gain it in a year or less, whereas to take some of these issues to the Federal courts would take 2 or 3 years or perhaps longer.

Increasingly, if I might add, Congressman, these are sophisticated products, high technology items. It is a striking variety that we encounter in that area.

Mr. PEASE. I am told that in a fair number of cases where patent infringement is charged under section 337 that the hearing study ultimately shows that those charges are invalid, that there is no patent infringement; is that correct?

Mr. ECKES. I do not have any figures on that. We can go back and look at it.

I think the problems in recent months have come up with respect to the domestic industry issue. The statute is somewhat vague and was written some 50 years ago. As a consequence, the Commission has had to apply it on a case-by-case basis. As you know, these cases are under the Administrative Procedure Act, so it is a judicial proceeding with appeals to the Court of Appeals for the Federal Circuit.

With respect to patent cases, the Commission has held in the past that the patent must be exploited by a manufacturer in the United States. Some of the cases that have come up involving domestic industries have been cases where the patent holder was actually manufacturing abroad, but simply selling it in the United States.

I have to be careful not to go too far in this area because of pending cases and appeals, but it is possible just to hypothesize a situation where someone from Japan or some other country, who has a U.S. patent, would seek to invoke section 337 to keep out allegedly infringing goods from a third country, such as Taiwan or Hong Kong.

The issue, of course, is should U.S. Government resources be used to investigate a case which involves essentially two importers.

Mr. **Pease**. Well, I think that is indeed a very serious question, and I am delighted that you are concerned about it. I seriously question whether there is an obligation on the part of the U.S. Congress and the ITC to protect manufacturers if they are Americans who happen to have patent rights and are manufacturing the product overseas.

As I understand it, under this current uncertainty in the law they can claim protection under section 337, is that correct?

Mr. **Eckes**. They can claim it under section 337, but the Commission in applying the law has been looking at the full range of their activities. We had a case recently, for example, involving toy trucks, on which the Commission found that a U.S. patent holder did not qualify as an industry in the United States.

In that case, the toy trucks were being sourced out. The items covered were manufactured, packaged, and quality tested in Hong Kong. The complainant's principal expenditures in the United States were for promotion, advertising, finance costs and the like.

There are some pending cases in that area.

Mr. **Pease**. Excuse me. Before you leave that, did the ITC grant some kind of relief in that case?

Mr. **Eckes**. No. In the toy truck case it was a negative determination.

We had one involving Rubik's cubes, however, which seemed somewhat similar, but we think quite different, in which the Commission has made an affirmative determination. My memory is that that case is still pending presidential review on policy grounds. So I would be hesitant to say much more about that. The 60 days has expired.

Mr. **Pease**. Thank you.

Mr. Chairman, I would like to turn to Mr. Horlick for a moment and begin by complimenting you, sir, on the excellent work you have done in investigating and responding to the numerous steel-related countervailing duty petitions filed with the ITA. In my district we are quite concerned about steel, and I think you have done an outstanding job of moving those along and giving due consideration to the petitions.

I would like your comment on just one thing, and that is your findings with respect to the tax policies of other countries and the extent to which tax policy was found to be a form of subsidy in light of GATT guidelines. Could you comment, please?

Mr. **Horlick**. Yes. I think I can make the point with an example from the steel cases. A general tax policy would not be considered a subsidy. For example, one of the allegations in the steel cases was that the Dutch producer received investment tax credits available to any producer of anything in the Netherlands. We would find that not to be a subsidy.

That is really a bit of the Nation's fiscal policy, available to all industries; therefore, in theory at least, it does not distort comparative advantage within that country. It does not lead people to invest in steel rather than widgets.

That same investment tax credit in the Netherlands has a special section for investments in certain areas, a regional development program. You get an additional kicker, if you will. That we would find to be a subsidy and have in other cases involving products from the Netherlands, because it does involve a distortion.

So the basic rule is, the fact that something is labeled tax policy is not what matters to us. If it is general through all industries, we are not going to find it a subsidy, and I think we are on sound ground in doing so. If it picks out a specific industry—and I cannot resist noting that our steel industry and a few others got special treatment under safe harbor leasing last year—we would consider it a subsidy.

Mr. **Pease**. OK, thank you.

This question is for Mr. Olmer. I have the impression from listening to the testimony this morning that the Commerce Department, the Trade Representative, and the International Trade Commission are all pretty evenhanded in dealing with petitions from U.S. manufacturers. That is to say, you look at the facts and let the chips fall where they may.

I guess that is commendable in a way, but the question does arise, getting back to something that Mr. Russo said before: Do other nations follow a similar evenhanded policy regarding the complaints and petitions of their own nationals, or are they more aggressive than we are in trying to shade their opinions toward their own nationals?

Mr. **Olmer**. Well, I do not have a thorough answer to that intriguing question, Mr. Pease. But I would say that we have no real choice, certainly under the antidumping/countervailing duty laws, than to administer them in an evenhanded way. By evenhanded, I mean a fair exposition of all of the facts and a reasonable interpretation as we have it available to us of what the law is.

The fact is, the United States has this enormous and attractive and diverse market, and so we are a target for other countries to look to, and therefore we are going to have a lot more complaints filed in the United States by U.S. manufacturers than would be the opposite, that is of foreign manufacturers asking their governments for relief from U.S. export activities, although that does happen.

In the few instances that I am familiar with, I have not seen evidence of unfair treatment by the application of foreign antidumping and countervailing duty laws as against U.S. petitioners. Without having available an investigation, a scrutiny that would enable us to uncover everything that went on—officially, at least—it seems to me that they do a pretty fair job.

I would like to defer to Mr. Horlick for his experience in that.

Mr. **Horlick**. It is a good question, because other countries do have these laws. In the last 2 years the EC has had 16 dumping cases against U.S. products and Canada 12. Through the GATT mechanism—and Mike is well aware of this—we keep an eye on those proceedings. Especially when a U.S. company has a complaint about its treatment, they come to us and USTR and we look into it.

Our general impression is that the European Community has been relatively fair in its dealings with U.S. products. In a couple of very politically sensitive cases involving U.S. textile imports, they did not impose any duties and obviously there was a lot of political pressure on them to do so from their own textile people.

We are forever complaining about other countries' failure to provide enough transparency, enough procedural safeguards, and they always say that we are trying to force them into the same mold as the United States, with lots of lawyers.

But we do have some concerns about some of the other countries which are passing these laws in the last few years since the Codes. It used to be the United States and Canada were the only people who really pushed these laws. Now it is the United States, the European Community, Canada, Australia, Chile, Spain, the Philippines, India, and Pakistan.

We get a new country putting into effect these laws once a month.

Ambassador **SMITH**. I would say, having recently returned from Geneva, there is some variation in terms of the transparency that Mr. Horlick referred to. That proves why the Codes are important, so that all are playing by at least a minimum of the same game rules. In response to Congressman Schulze, this is all the more reason we have to make this system work.

I would second Mr. Horlick's observation that as far as we know the Europeans, for example, have carried out their processes, perhaps in a different, but in a completely fair way.

Mr. **PEASE**. Thank you very much. That is very reassuring.

Mr. Chairman, I will yield at this point.

Chairman **GIBBONS**. Let me ask a question. How about the Japanese? How have they been doing this? Do they have any cases?

Mr. **HORLICK**. The Japanese started their first dumping and their first countervailing duty case in history this year. They have not been completed. One is aimed—I am not sure. I believe one case is at South Korea, the other is at Pakistan.

My impression is that the Japanese have other ways of taking care of import problems.

Chairman **GIBBONS**. Mr. Schulze, would you like to continue?

Mr. **SCHULZE**. Just one more question, Mr. Chairman.

On the antidumping procedures, 140 days from the initiation of an investigation, do you have any feeling that that might be cut down to 100 days, or would that impose too tight a time frame?

Mr. **OLMER**. Well, my general impression, having watched the mad scramble to deal with the couple of hundred cases we have had in the last year, and in particular the onslaught of the carbon steel cases, is that we could not do a fair job in the preliminary phases of the investigation if it was cut down substantially.

Mr. **SCHULZE**. In countervailing there is 65 days.

Mr. **OLMER**. Well, I was going to say that one of the things that happens is, to the extent you do a superficial job in the beginning you are likely to leave yourself a problem at the end, and the better job we can do in the early stages of the process, it seems to me the more we can assure ourselves that it will be either upheld on appeal or that an appeal will not be taken, or that we have done a fair job.

But Mr. Horlick is better able to answer that.

Mr. **Horlick**. I think you have to go back to 1979. What this committee was looking at was the experience that they had, that the administration had, until then. And the assumption at the time was that countervailing duty cases were somewhat simpler than dumping, because that had been the experience. Your standard countervailing duty case was an export rebate, visible and so on, whereas dumping cases are an horrendously complicated series of calculations.

Since then what we have gotten is massive countervailing cases that, with all due respect to petitioners—and I used to be a lawyer, frequently representing petitioners—they tend to throw in the kitchen sink. We will get allegations on 30 or 40 different programs.

So in some respects the time limit on that is too short. On the other hand, on dumping cases, what we have done in the last 2 years—and some cases, the steel cases, forced us into it—is to computerize. What we get now is, if you have a fairly simple dumping case where you have a sophisticated foreign company, we can actually do it—we may be able to do it a little faster if they could get their tape to match up with our system, because we do not have to do the calculations by hand any more.

But just to take an example, the alloyed tool steel from the Federal Republic of Germany, the response we got on home market sales had 190,000 transactions on it, for each of which you have to make 20 to 30 adjustments. If you can ever get the tape right it goes very fast, assuming the computer does not go down, as it did in the middle of the steel investigations.

But I do not like to hold out much hope of speeding up these cases. The problem—and this is a personal opinion, not the administration position, and from having been a lawyer. The problem is getting to the filing of the petition. It is building your case. It is waiting until you can show injury. The thing moves along fairly smartly after then.

Mr. **Schulze**. It seems to me that when we originally put the timeframes in effect we did tighten them up more than the recommendations. We shortened the timeframes, and we were hoping that things would work. But in your opinion we should not tamper with those? It is just one of the areas that I presume we will consider.

Do you think that knocking 10 or 20 days off of the 140 would be an insurmountable obstacle?

Mr. **Horlick**. I would trade you those if we could get an extra 10 on the countervailing.

Mr. **Schulze**. Well, we might be able to do that.

Mr. **Horlick**. I want to get some other people to look at that.

Mr. **Schulze**. Make that 75 and then——

Mr. **Horlick**. The countervailing is 85, extendable by 65. But I had better check before I say that.

Mr. **Schulze**. Mr. Olmer, if we can go back for just a moment, we were talking about the threat. I think the threat is extremely important when you tie it into targeting.

In your opinion is there some kind of a mechanism that we could develop that would define targeting early, so that we could deal with a threat where it involved targeting at an early stage, rather than wait until the damage is done?

Mr. **Olmer**. I do not have the solution to the question right now, but I can tell you that I believe it is close to essential that we find a solution, that we work hard to develop the criteria for establishing beyond a reasonable doubt that a given industry in the United States, important to the U.S. economy, perhaps to its national security, has been selected, targeted by a foreign government or foreign exporter with the aid of its government, and that we use that in part as one of the factors to be applied in the determination of threat of injury, absolutely.

But I do not have the formula by which that is to be done, though I hope to be in a position to make some recommendations in that regard over the next few months.

Mr. **Schulze**. That is one of the things you are working on and perhaps one of the things you would recommend that we as a committee look into?

Mr. **Olmer**. Indeed, yes, sir.

Mr. **Schulze**. Thank you.

Thank you, Mr. Chairman.

Chairman **Gibbons**. Before I go back to my colleague Mr. Pease, let me make an administrative announcement. The Chair plans to break for lunch at 12:30, and I am going to take the next administrative issues panel and put it over right after lunch, which would probably come at 1:30, let us say quarter to 2. And I will attempt to get Mr. Galvin and Mr. Shannon and the AFL-CIO before we break for lunch.

Go ahead, Mr. Pease.

Mr. **Pease**. Well, Mr. Chairman, I have two quick questions. One, a company in my district which is involved in an antidumping case is convinced that we ought not to allow dumping under any circumstances, whether or not there is domestic injury. It makes the point that if there is a finding that dumping has occurred we ought not to have to go to the second step and have the ITC determine whether there is injury or not.

Could members of the panel comment on that proposal?

Mr. **Olmer**. I would like to defer to Ambassador Smith and the U.S. Trade Representative's office, because that was an issue, I know, during the process of enacting the 1979 legislation. So I will buck it.

Mr. **Pease**. To whom do you want to refer, Mr. Smith?

Mr. **Hathaway**. I got the short straw.

The response really is that there is and has been, through in large part the pushing of the United States, an international obligation not to impose antidumping duties unless there is a finding of material injury. Now, I have been to so many conferences and listened to so many hours of debate on the economic justification for an injury test based on comparative advantage, that is, not wanting to impose dumping duties unless there was injury. The theory is that it is advantageous to the consuming country to receive low cost products and unless there is some harm shown to the industry producing the same article, it is an advantage that should be welcomed.

That could be reexamined. I am sure it is in a constant state of being discussed within various domestic industries that have difficulty putting together an appropriate case for showing injury at the ITC. However, we are currently under an international obligation not to impose dumping duties in the absence of a material injury finding. As we pointed out, this obligation is also in place for the increasing number of cases involving our exports. Therefore, it would be a very serious matter to review even the propriety of having a material injury test.

If you would like we could supply you a much more comprehensive discussion of the debate that has gone on in the past about the benefits or the economic rationale for the dumping laws as they have been established. The injury test, though, is something that we operate with more as a given. There is an international obligation. It was something that the United States willingly entered into, and as a matter of fact pushed for and has been a leading proponent of the international discipline.

That does not deal with the question of what the injury test is, how it is applied, and whether there are administrative things that can make it work better. But the existence of an injury test is something that is well established, and it would be, I think, a better place to start for us to provide you, and discuss with you as much as we could, the rationale for it. If we then see some reason for going beyond that we could do that at a later time.

Mr. SCHULZE. Would the gentleman yield briefly?

Is there in fact noninjurious dumping?

Mr. HATHAWAY. Is there noninjurious dumping? Certainly. You can have dumping where there is no production in the United States.

Mr. SCHULZE. I am not talking about theoretically.

Mr. HATHAWAY. Certainly. You could have cases where there is no domestic industry.

Mr. SCHULZE. There is a fair amount? In other words, it is difficult for me to understand why anyone would dump if there was no competition in the market.

Mr. HATHAWAY. Maybe competition from other sources outside the United States. It may well be that there is not a domestic producer in the United States that is being injured. It is a different question from how much does it take to create injury or threat of injury. That is a wholly separate problem. But the question of whether there is a practical possibility of dumping taking place that operates, and that all would agree operates, to the economic advantage of the United States must be answered yes.

The term dumping itself has the connotation that it is bad and that it is somehow injurious. That is not accepted as such in terms of an economic analysis or how it is treated internationally. It really should be referred to as injurious dumping, and it is not a given that——

Mr. SCHULZE. I am sure we have no mechanism for tracking noninjurious dumping. That is why I asked whether from your knowledge—I do not see any reason to track it, but you in fact know that there is noninjurious dumping?

Ambassador **Smith**. Sir, I had a number of countries, such as Singapore, tell us point blank in Geneva, send us your dumped goods. In talking with their officials, for example, they feel very strongly that, if you want to dump go ahead and dump; they will be the beneficiary of it.

Mr. **Pease**. If I can reclaim my time.

I would like Mr. Eckes to comment on this. But let me add one other dimension based on the answer we have just received. I understand that the process of determining whether there is dumping takes considerably longer than the subsequent process of determining whether there is injury. I am just wondering whether there is any possibility that those two could be done concurrently, that is whether there could be a preliminary indication of likely dumping or possible dumping, which at that point would allow the International Trade Commission to start its process, so that there is not a delay of 2 or 3 months or whatever after the determination of dumping is made.

Mr. **Eckes**. Congressman Pease, I would like to have our general counsel Mike Stein react to that. I think he was present at the creation, when they helped write these laws, and has a little better perspective on it than I have.

Mr. **Stein**. First, Congressman, there is simultaneous——

Chairman **Gibbons**. Could you identify yourself?

Mr. **Stein**. My name is Michael Stein. I am general counsel of the International Trade Commission.

There is simultaneous investigation at the preliminary stage. That is, the Commission does its preliminary investigation at the same time that the Commerce Department is beginning its investigation.

With respect to the final investigations, the reason they are not totally simultaneous, we do a good deal of our final investigation simultaneously with the Commerce Department in final investigation. If there is a Commerce preliminary affirmative, that is when we start doing our final investigation, and of course the Commerce final investigation is going on.

But we do need time after Commerce has completed its investigation, because it is not always clear that the entire proportion of goods alleged to be sold at unfair value or alleged to be subsidized actually are subsidized or sold at less than fair value, and we must know this in order to do a final injury test, that there is injury by reason of less than fair value sales.

Let us suppose that Commerce finds that 80 percent of the imports are sold at fair value and only 20 percent are sold at less than fair value. That would obviously have an effect on the Commission's injury determination.

Mr. **Pease**. What is the average length of time for final determination by the ITC after the Commerce Department makes its final determination of dumping?

Mr. **Stein**. The statute requires that our final determination be done within 45 days.

Mr. **Pease**. That is not a material delay.

Mr. **Stein**. That is correct.

Mr. **Pease**. Thank you very much, Mr. Chairman.

Chairman **Gibbons**. Thank you, and I thank all the panel.

I would hope that you would bend your efforts in the coming months to find out if there are not some steps we could eliminate, perhaps try to gather data and maintain it on a computerized basis or something so that we can expedite the work of the various commissions that are involved here and the agencies that are involved, and also to make it possible for litigants, American businesses, to try to cut down the cost.

This cost thing is really bugging a lot of our businesses, particularly those that are not extremely large or are not members of huge trade associations. I run into that all over as I listen to people complain. I realize that the laws we have here date from 1974 or 1979, most of them, other than some of the ones that were referred to by Mr. Eckes.

While we have had a lot of experience under them, we have not had—we are just now coming to the point where we can really test whether they are effective or not. We have transferred all of the countervailing duty and dumping investigations out of the Treasury Department over to the Department of Commerce, and it has been my observation that that has been—that has exceeded our expectations as far as the way the cases have been handled.

I am reminded of when I sat here 10 or 12 years ago. We could not find that Treasury had ever solved a case. We could not find any of them that they had ever gotten to the end of. So, I commend you for what you have done in getting these cases up, getting them heard, getting them decided, but we have got to find ways to cut down the cost, cut down the time, keep it transparent, keep it fair. I think that is a challenge that is ahead of us, and I hope that at the highest level of our government we can work in that direction.

Mr. Smith, go ahead.

Mr. SMITH. Mr. Chairman, I want to thank you for holding these oversight hearings. Your comments and those of the witnesses that will be heard later are going to be very helpful as we continue the interagency review of the matters before us.

We would say that one should proceed with some caution. I think we have indicated here that there are some problems that we have encountered in trying to carry out the job in the best way that we can. It is clear, though, that we want to remain sensitive to this.

I would just add, as one having recently returned from abroad, that we have to keep in mind our international obligations and the fact that we have to balance, our import policies with the export policies.

In regard to the question of targeting raised by Congressman Schulze and Under Secretary Olmer, this is one issue that we do have to look at, and we do want to work with Congress in the months ahead and exchange some views if this process needs to be fixed, how it can be fixed, and if it does not need to be fixed, what other sorts of things should we be doing?

We certainly do thank you for this opportunity to give you our views.

Chairman GIBBONS. Well, now, Ambassador Smith, also, let me add this. We have got to find some way to cure the perceptions of GATT, whether it is GATT plus, GATT minus, GATT in addition, GATT less the group of 77 or something else. We have got to improve it.

Let me ask you, is there any particular part of the USTR office that is given this mission, or is it just generally shared?

Mr. SMITH. I think that it is just not USTR or any part of USTR, but all agencies of the government particularly active in the trade area are concerned with this.

Chairman GIBBONS. I want something more than just concern, though. I want to see you all meeting on this regularly, not only meeting within the administration and with Congress about it, but I want to see you meeting with our trading competitors out there.

I am tired of concern. I have enough of that myself.

Mr. SMITH. I agree with you. In specific answer to your question, Ambassador Brock has been spending a great deal of time on this issue, as have myself, Dave MacDonald, Geza Feketekuty, and people on our trade policy staff.

Chairman GIBBONS. I would like to see some actual planning work going forward. I would like to see some timetables on some of these matters, so that I could measure our progress, because without an improvement in GATT we are never going to see much satisfaction with the operation of our domestic trade laws. And that is what we are trying to do.

We are trying to create a trading system that people abide by and respect because they realize it works and it is fair. We have got to improve the GATT. We have just got to find a way to improve it.

Mr. SMITH. We agree.

Mr. OLMER. Mr. Chairman, I would like to say on behalf of many of us in the administration, we do appreciate the sensitivity shown by Members on both sides of the aisle to that problem that I believe we should not quail from identifying out of an abundance of caution. That is the problem of this decade of industrial targeting and how we fix it, and whether we fix it by means presently known and available to us, or whether we need to devise new ways, I think, will be the test by which the Congress and the administration are judged to be not only fair and prudent, but effective.

And the question of effectiveness is the question that is vexing a lot of people in this country, and whether America will remain preeminent not only in high technology, but whether it will have an abundant economy from which all of us will benefit.

Chairman. GIBBONS. Well, Mr. Olmer, targeting, to me, smacks of an unfair trade practice. I realize that we have perhaps targeted—we did not perhaps realize we were targeting, but we did, and perhaps we ought to be careful about that. I think it is the deliberate picking out, though, of a victim and going after it, that to me is an unfair trade practice. It is going to be difficult to define, but it must be defined, and it seems to me to be the heart of the future problems that we have.

We can generally identify the subsidies, and we are apparently making some remarkable progress in that area. We can identify dumping, but now we get into what is really sort of an anticompetitive practice, a system of going out and deciding, I am going to control the market in this area.

I look at American targeting in the space industry, and we were out to conquer space; we were not out to conquer anyone else. The fact that we probably made some progress in space, and it helped in other areas, is certainly a heck of a lot different than saying, "I am going to dominate the iron and steel industry," or "I am going to dominate the computer industry," and "we are going to gang up and do it," which is what I am told the Japanese do. You know, they protect their people internally, and then when they get strong enough they come out and engage in what I think are predatory type practices on our markets.

That has to stop. I do not know how to define it, and maybe we ought to be studying it more. But I would urge the administration to tackle that problem, and I would urge the world community to tackle the problem, because it does nothing but breed distrust and hate and suspicion, and God knows, we have enough of that without deliberately doing it.

So, that is what I hope you all will set as your goals as we move ahead.

Mr. OLMER. We are working on it, sir, and we do look forward to working with the Congress in producing hopefully some answers to it.

Chairman GIBBONS. Well, do not depend on us too much. We are good at criticizing, and we are good at making suggestions, but we are not very good on the followthrough. We have to depend upon you all to do the followthrough. We are experts at one thing. We can tell you how we got elected last time, and sometimes we are not too accurate in that. So, we need your help. We have some real problems out there.

Thank you all very much for coming today.

[Questions and answers follow:]

DEPARTMENT OF COMMERCE RESPONSES

Question 1. What resources do you now have for antidumping and countervailing duty investigations and annual reviews, respectively? Please tell us what professional and non-professional staff are assigned, what their expertise is, what their grade levels are, and what your plans are to upgrade staffing.

Answer. During this fiscal year (1983) Import Administration has budgeted $2.07 million to support investigations and $4.01 million to support Compliance functions and annual reviews.

The Investigations functions are supported by 38 professional staff responsible for either performing investigations or directing their performance. Nine non-professional staff serve in clerical and secretarial roles. The expertise of the professional staff is wide-ranging, encompassing academic and professional backgrounds in economics, accounting, and international trade, as well as individualized product experience. Generally speaking, individuals either work in antidumpting areas or countervailing duty areas, but do not easily intermingle due to the differences in the laws and procedures attached to the adjudication of each.

The Compliance functions are supported by 89 professional staff responsible for either performing annual reviews, monitoring of suspension agreements, or directing either activity. Sixteen non-professional staff serve in clerical and secretarial roles.

The Compliance functions are divided into three distinct areas: antidumping duty review, countervailing duty review, and agreements compliance review. As in the investigations functions, staff expertise encompasses economics, accounting, and international trade, as well as individualized product experience.

The grade levels for both areas is essentially the same, with Investigations and Compliance each headed by an SES Level 2 Director ($59,230). Investigations has two divisions, each headed by a GS-14 division director ($41,277). Each division has three to four programs, divided by geographic area or product, and is supervised by a GS-13 Supervisory Import Compliance Specialist ($34,930). Each program has five to six Import Compliance Specialists whose grade levels range from GS-7 to GS-12 ($16,559 to $29,374).

As previously stated, Compliance has three distinct areas, each with a division director at the GS-15 level ($48,553), with the exception of the Countervailing Duty Division, which is headed by a GS-14 Director ($41,277). The underlying structures in each division are essentially the same as in Investigations.

Clerical and Secretarial personnel in both Compliance and Investigations range from GS-3 Clerk/Typist ($10,645) to GS-7 Secretaries ($16,559).

Question 2. Is a major factor in your unwillingness to verify all Section 751 Annual Reviews the lack of adequate resources to address this need?

Answer. Unwillingness is not as accurate perhaps as inability. During fiscal year 1982 the domestic steel industry, as you well know, filed over 140 petitions alleging unfair trade practices by the European Community, Brazil, Korea, Japan and other nations as well. This factor alone overwhelmed the small staff in Investigations. To make matters worse, we had additional allegations ranging from Brazilian footwear to Canadian potatoes and almost any other product in between, for an additional 70 petitions. The total number of petitions handled in fiscal year 1982 was 216, with 90 percent of these initiated for investigations. These overwhelming numbers were handled by a staff who in the previous fiscal year faced only 46 petitions.

Import investigations had no choice but to borrow staff from Compliance to assist the Investigations staff in performing their work. If they failed to do this, statutory mandated milestones for performing investigations would not have been met, and the U.S. Government would not be serving the domestic industry in expeditiously investigating allegations of unfair trade practices. When the steel investigations were terminated by suspension agreement, the staff borrowed from Investigations were returned to Compliance duties.

However, unlike Investigations where the petition caseload increases and decreases virtually on a month to month basis without notice, Compliance's caseload of reviews to perform only goes up. Although there are substantially more orders and agreements to review than there were two years ago, there has been no increase in staff to handle the increase in work.

In fiscal year 1982, Import Administration successfully petitioned for 11 additional temporary professional personnel (who will work for one year) to work to clear the accumulated backlog of annual reviews. These 11 individuals came on board on or about March 1, 1982.

Question 3. With respect to your investigation of the steel cases and subway car cases, what range and type of resources did you dedicate to these tasks?

Answer. The investigation of the steel cases, first filed on January 11, 1982, encompassed more than ten months of work as we successfully negotiated suspension agreements with the European Community for their portion of the unfair trade practices complaint in October 1982. Other respondents in the steel cases—Brazil, South Africa, Korea, etc.—continued beyond that date as the investigations of these nations steel exports to the U.S. continued.

At the high point of the investigation in the early summer months of 1982, approximately 55 staff professionals and para-professionals were involved in investigating the steel trade complaints. In addition to the Import Administration staff assigned to these cases, the Department hired consultants in specialized steel product areas to brief permanent staff on unique production techniques and product differentiation. Under the Assistant Secretary for International Economic Policy, advice was provided to Import Administration staff on GATT-related questions in trade policy as well as information related to individual national laws pertaining to export investments and the steel industry.

It was also during the steel investigations that computer techniques for processing large scale production and shipment calculations were applied, many for the first time.

The entire process—from individual staff working on the investigations, policy personnel reviewing decisions on procedures, consultations with other Federal agencies, travel expenses to verify information, hiring consultants with specialized expertise in steel matters, and application of computer processing of data—cost approximately $2.75 million.

The range of resources dedicated to the subway car cases was much the same as in steel, though of considerably less expense because the cases were substantially smaller in volume. Two Investigations staff worked on the countervailing duty complaint at its high point, and additional policy staff reviewed complex legal questions pertaining to the conferral of subsidy benefits upon Bombardier in financing its sale. Once again, Import Administration was forced to utilize consultant services in financial matters that were beyond the expertise of permanent staff, and those services added immeasurable technical quality to the approach Import Administration took in investigating the cases.

All tolled, considering the relative short life span the cases had and the lower number of staff assigned to the cases due to its less substantial size, less than $250,000 was spent in investigating the case.

Question 4. Would a further diminution of this staff harm the quality of your investigatory process?

Answer. There is no question but that a significant diminution of the staff structure in the Office of Investigations and the Office of Compliance would hamper those offices' ability to continue meeting every statutory-mandated milestone in the processing of AD and CVD unfair trade allegations and annual review.

Chairman GIBBONS. Our next witness is Mr. Galvin of the Motorola Corp., chairman of the board, and then, if Mr. Shannon is in the room, we will take him, and then the AFL-CIO.

Mr. Galvin, we welcome you here. We look forward to your testimony. You may proceed as you wish.

STATEMENT OF ROBERT W. GALVIN, CHAIRMAN OF THE BOARD, MOTOROLA, INC.

Mr. GALVIN. Thank you, sir.

I am Bob Galvin, chief executive officer of Motorola. Motorola is an electronics company with approximately $4 billion worth of business. It has been in international trade for about 25 years, and we are in a broad spectrum of the various kinds of products that you would expect to identify with electronics.

I have submitted, sir, a written testimony that presumably has been read or can be read by those that are interested in the subject, and I will not refer in any detail to that particular testimony, but rather would speak very briefly and very generally about its content and certain associated factors.

Chairman. GIBBONS. Yes, sir. We will put your entire statement in the record.

Let me say for the record I only have one complaint against your paper, and that is, I leave it at home when I should have it with me, as I did this morning.

Mr. GALVIN. Thank you, sir.

We consider that the electronics industry, and we are just one model of that, is a progressive industry, meaning that we reach out. We are making very large investments. We are not waiting for other people to help us. We think that we have maintained an up-to-date posture and are conducting our business in a very progressive set of basic ways of performing our functions.

We are not conducting ourselves with government on the basis that we need help because we are behind. We think we are leadership entities. Our concern, sir, is that we are dealing in a world where there is considerable government intervention, and this represents an incremental difference in the formula of doing business.

This government intervention on the part of various governments in various ways finds itself first in inordinate protectionism. It is by degree in various countries, but in telecommunications, because the telecommunications market is essentially owned by the government in the form of the post and telegraph entities of certain countries, it is difficult, if not impossible, to do business in moving and gaining access to markets there.

There are all manner of protectionisms that have been explicit and implicit in our relationships with Japan. I believe that for the most part these are known to this committee, and I will just make a general reference and be pleased to speak to details if that is appropriate, but as a consequence of that protectionism, which has been inordinate in many markets and most particularly in Japan, it has not been possible for American manufacturers to establish themselves with a reasonable share of market, and therefore be sufficiently up on the learning curve in the world marketplace, that being a big part of the world marketplace, and we have been placed at a disadvantage.

As important as that is, and as influential as that is, our principal concern is the concern over the government intervention and its effect on this market. The United States is a part of the international marketplace, and we are the international marketplace for the others, and we are the international marketplace for ourselves, and our concern is this issue that you have just been dialoging on, the issue of targeting.

We consider that there are numerous representations of what targeting is, and it might be helpful if I would just tick off a litany of the kinds of characteristics which in some mix or another would be representational of what is targeting. First of all, it inescapably does involve protectionism. The targeter starts by protecting his own market. We have already referenced that. It generally involves some class of a determination of intent to dominate.

It involves concerted or collective enterprise activities. In the case of Japan, these are defined in law. They are explicit to a very substantial degree. Examples: Public Law 17, 1971; Public Law 84, 1984, the laws on the enhancement of their electronics industries.

These kinds of laws and the administrative involvements associated with them permit the defining of facilities company by company, the sizing of the facilities, the resources allocated to particular companies, the specializations assigned by one company or a series of companies, these things all done under a legislative concert. They may involve the establishment of cartels or the setting aside or the abandoning of their antimonopoly laws for particular pragmatic reasons.

They may involve the limiting of standards, the granting of concessionary loans, loans which have provisions associated with them, such as you are loaned the money and if you do not succeed in the venture, you do not have to pay it back; or a loan that is granted at such an extraordinary interest rate that it is remarkable, almost a subsidy unto itself.

These loans may be indicative in nature, meaning that they indicate to others how they in concert should follow. There may be prices fixed. There are interlocking financial and industrial relationships, incidentally, something that you would not countenance in this country. And they are given a riskless environment wherein they can afford to put in place capacity that those who may be risking their own funds as liberally as we may invest can put things ahead of the marketplace in a fashion that if the market is there, they will clearly have an opportunity to move advantageously to serve that market. If it is not, the company will not be at risk, and subsidies are very much a party to this.

Now, one does not have to have the totality of these for there to be targeting. It can be a mix of these kinds of things. But I think that illustrates what the practical issues are that we have to deal with. These place companies like ours at a considerable disadvantage on our most advanced products, and in this testimony I provide some information with regard to the experience we have had with one of the most advanced semiconductor products, a memory called the 64K dynamic random access memory. I will not further or redundantly speak to that issue.

We also refer in this document to the fact that there are impacts in the telecommunications area, and permit me to just use as one little example here a new product that our company is currently employing in an experimental way here in Baltimore-Washington regarding the new cellular radio telephone system.

Our company has invested $120 million in the development of a system. We did this in parallel with AT&T so that there would be two competing systems available for the FCC to decide what shall be the system of our country. We think we are putting together a very efficient, well-tooled, automated factory to produce both the base station equipment and the kind of product you see here, which is the kind that the customer might use as a portable or have a mobile in his car.

We are concerned that if a country like France or Germany or most particularly Japan were to decide that, well, we had better have a very large percent of that market and employ some of these tactics that I have just described here, and if we do not have a defense against that, as efficient or as hard as we have tried, or as progressive as we have been in our investment, that the kinds of effects that have taken place in the 64K Ram, where the Japanese now have 60, 70 percent of the merchant market of that business, could very well take place here, not as a function of our ability to compete, but as a function of the fact that there was this government intervention, this distortion in the market affects valuations of what one party could afford and another party could not afford.

Now, let me bring my verbalization of this testimony to a conclusion, sir, by merely summarizing the recommendations that are printed in this document, and I abbreviate even these. We consider that the defenses of our country currently are not sufficient, the antidumping, the countervailing duty, the 301 applications, et cetera.

These things should be sharpened up, and our defense system against these unfair targeting practice that injure U.S. industry, we believe, should embody the following five basic principles.

One, any foreign government practice that generates an unfair consequence, such as the kinds of things that I have described or alluded to that cause or threaten injury to a U.S. industry in the U.S. market should be subject to automatic countermeasures.

Two, the U.S. Government should be required to actively monitor foreign industrial policies, and to self-initiate formal investigatory procedures where unfair practices that threaten to injure a U.S. industry are found.

Three, countermeasures should be designed to fully offset the market distorting advantages another government has conferred on its producers, and in particular we think that the emphasis should be placed on the better employment of the 301 provision.

Four, proceeds from countermeasures should be made available to damaged firms or workers for use in regaining any loss of competitiveness that results from unfair targeting practices.

And five, the determination of injury should recognize the criticality of maintaining high levels of research and investment to future competitiveness in advanced technology industries, and our injury definition should be liberalized and perceived as being something that will not inhibit us to the accomplishment of the employment of our defenses.

The system must be comprehensive in its potential application, and predictable in its response to particular problems. Such a system is needed to create or to reestablish an environment in which U.S. firms will continue to invest at levels required to remain competitive. Without such an environment, we are unlikely to prevent the erosion of U.S. capabilities in targeted industries or to deter unfair targeting practices.

I thank you, sir, for permitting this introductory statement.

[The prepared statement follows:]

STATEMENT OF ROBERT W. GALVIN, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, MOTOROLA, INC.

Mr. Chairman and distinguished members of the subcommittee, I am pleased to appear before you today to discuss options for improving U.S. trade remedy laws. I believe that this is an extremely important subject and I want to commend the subcommittee for undertaking a comprehensive review.

My remarks today are focused on the relevance of U.S. trade remedies to advanced technology industries such as the electronics industries we participate in. Motorola is a diversified manufacturer of telecommunications equipment, semiconductors, automotive electronics, computers, and data communications equipment. We are among [illegible]rld's leaders in technology and sales of pagers, mobile radios, cellular radio [illegible] automotive electronics and a variety of semiconductor products. Our co[illegible]ges its affairs in a progressive manner and takes a long term and gl[illegible] p[illegible]e of our markets.

Why is a [illegible]mpa[illegible]ours appearing here to talk about trade remedies, which are normal[illegible] asso[illegible]h long established industries like textiles, steel and footwear? Because w[illegible]anced technology industries today face a serious challenge from fore[illegible] like Japan who for decades have employed and currently are emp[illegible]tionism, financial support, and concerted R&D and industry ra[illegible]nali[illegible]ograms to target industries in which U.S. firms are very competit[illegible]. Such targeting involves some methods which we believe would be illegal i[illegible]his country and some that are inconsistent with our free market principles, including suspension of antitrust considerations to encourage cartels, manipulation of capital markets to favor certain firms, granting of low interest or nonrepayable loans, defining which companies shall be in a particular business, discriminatory government procurement, government control of technology transfers, and government restrictions on foreign investment. The challenge of such targeting practices poses a threat to continued U.S. participation in certain product markets and, even more serious, to the technological and industrial base that underpins U.S. leadership in the world.

I have attached to my testimony a chart which enumerates some of the countries where advanced high techology sectors have been targeted by national governments for special support and attention. It is certainly not an exhaustive list but does demonstrate the range of countries involved and industries affected. Even this partial list suggests that in most important advanced technologies our major trading competitors have targeting programs. It also suggests that electronics sectors have been targeted most widely.

Let me bring these general observations down to some specific examples in our own business.

In telecommunications, one form of targeting or another is endemic among nations with capabilities to produce communications equipment. The major markets of Europe and Japan continue to be largely closed to foreign competition as a result of discriminatory government procurement practices that have escaped international discipline under the GATT. National telecommunications monopolies also commonly underwrite R&D efforts by domestic firms to develop new technological capabilities. On top of this, national governments are using political influence and subsidized credits to push their telecommunications products into world markets.

Contrast this situation with the United States. We do few of these things here. In fact, we are currently going through a technology—and government-induced period of change that will make the U.S. market more open to foreign compeition. For the next several years, we face a competitive situation in which our major foreign competitors will operate from a protected home market base with government supported efforts to increase exports while our market is more vulnerable to foreign competition than it has ever been in the past. The results are not hard to predict.

Let me give you a brief example of what might happen. A new system called cellular radio is being introduced in the United States this year. Our company spent more than $120 million over the last 15 years to develop this technology. Due to delays in the government regulatory process we are just now getting the opportunity to market it.

In the meantime Japan has acquired the technology through participation in U.S. test programs by ATT while no U.S. firm has participated in Japanese test programs. Because of this situation the Japanese are in a position to exploit our market while we cannot do the same in theirs. As a result we may be denied some of the profits of our $120 million development effort.

In semiconductors, our principal foreign competitor is Japan, which has employed a wide range of targeting methods to develop its dometic industry. These have been documented in a recent Semiconductor Industry Association [SIA] study. The principal conclusion is that Japan's targeting policies have fundamentally altered international competition. Once again the consequences are not hard to predict.

Some will argue at this point that we have trade laws to deal with these types of targeting problems. We can impose duties against the subsidies and dumping. Any other unfair practices can be handled under section 301. Unfortunately, the way these laws are written and administered there is little solace in their application to particular problems and they are ineffective in generally discouraging foreign unfair practices and reducing the risk those nonmarket practices impose on U.S. firms. In other words there are serious inadequacies in the specific features of the existing trade laws and taken together they do not provide a credible defense and thus deterrent to unfair targeting practices.

Let me explore the reasoning for these rather strong conclusions.

The SIA's study has identified at least $500 million in Japanese Government financial aid to its domestic semiconductor industry over the 1976–82 period. That sounds like a large enough subsidy to make it worthwhile to pursue under the CVD laws. But look more closely. The Japanese industry's total annual shipments are on the order of $5 billion and the effects of the subsidies would be spread over at least several years of shipments, say 5 years for the sake of discussion. So now we must divide the $500 million by a denominator of about $25 billion. This obviously would lead to a nominal and ineffective amount of countervailing duty.

Suppose we try to focus a CVD action on a particular product like 64K RAM's, just as the Japanese have targeted a few particular technologies. The SIA study identifies government subsidies of $132 million directly applied to the technology used to produce very large scale integrated circuits (VLSI). Once again the key question is the denominator to be used. A leading industry analyst last year estimated the world market for 64K RAM's from 1981–86 at roughly $5½ billion. If the Japanese maintain a share of 60–70 percent which appears likely, then they would sell about $3.5 billion. By my calculations the identified subsidy amounts to under 4 percent using these numbers—the equivalent of the current U.S. tariff which has had no effect on Japanese sales of RAM's in this market. Frankly, that may be high since there is no guarantee that sales after 1986 wouldn't be included or that sales of 256K RAM's and other VLSI products wouldn't be included in the denominator.

Since the subsidy involved can thus be perceived as so small, aren't we making much ado about nothing? I hardly think so, and here is where we begin to get at the serious inadequacies of the CVD laws. The central issue is the amount of benefit conveyed to Japanese semiconductor companies, not the actual amount of money that was transferred by the Japanese Government. Those benefits can be substantially greater than the amount of money involved. The case of 64K RAM's clearly demonstrates this point.

The Japanese Government's subsidy of $132 million was injected into an industry-government VLSI research association in which six Japanese companies participated. Each of those six companies recevied the full benefit of the government subsidy since they each got the principal collective results of the research. An NEC executive is quoted as saying his firm would have spent five times as much on R&D for electron beam technology without the VLSI program. Thus, if we multiply the government subsidy 5 or 6 times we will get much closer to the subsidy benefits to Japanese firms—$660-$790 million or 20 to 24 percent of 64K RAM sales projected for 1981-86.

But that is not the only subsidy benefit of the VLSI association. The companies themselves contributed funds totaling $191 million to the program. Lets say each contributed one-sixth of the total, or $32 million. For that small expenditure, each company received the benefit of $160 million in expenditures by other companies in addition to the $130 million government contribution—a ratio of 9 to 1. If one takes the government subsidy benefit and adds the cross-company subsidy benefit to it, the total benefit to the companies is roughly $1.5 billion. This is how much more the industry would have spent to individually develop VLSI technologies comparable to what they got out of the VLSI association. That is equivalent to more than 40 percent of 64K RAM sales for 1981-86.

Some would argue that company contributions should not be considered as a subsidy, but I would disagree. It was only by forming a research cartel under the auspices of the Japanese Government, that all the major Japanese producers could participate without violating anti-monopoly laws. Japanese antitrust laws are patterned after U.S. laws and in the United States a company research cooperative involving all the major producers in commercial development of a technology like VLSI probably would have violated our antitrust provisions. So I conclude that the Japanese Government's imprimatur on the VLSI associations was an essential ingredient in enabling Japanese firms to cross-subsidize.

But the story doesn't stop here. Undoubtedly there are additional subsidies which we can't link directly to RAM's because of the lack of adequate public documentation. We know of other research projects and general financial assistance to the same companies but can't trace the effects.

At least as dramatic as the subsidized savings to Japanese companies, is the effect of the VLSI program on international competition. In effect the program carried all six Japanese producers from a trailing position in 16K RAM's to a leadership position in 64K RAM's. Is it implausible to expect some of those companies would not have made this transition without the VLSI association? After all, the United States has seen 12 American companies in a world leadership position in 16K RAM's dwindle to 3 to 5 companies in 64K RAM's. This kind of dramatic overnight shift in the pattern of international production can only be understood in the context of distortions of international market competition like the VLSI association.

And for those few American companies left in the RAM business, the excess 64K RAM capacity built by the Japanese in 1981 produced unprecedented price cutting that led to very large losses for those U.S. firms for the last 2 years.

I have lingered on this particular case because it demonstrates so well how a foreign targeting policy can fundamentally alter conditions of international competition with no real risk of U.S. counteraction to prevent irreparable injury to a U.S. industry. Under current CVD law only the original $132 million would be actionable and it is quite conceivable the U.S. Government would suspend the collection of duty if the Japanese Government agreed not to subsidize in the future—in effect forgiving the earlier subsidy. A CVD law that fails to recognize and counter the full range of subsidy effects of targeting policies and the full magnitude of their impact is not an effective deterrent to such practices or defense for U.S. industries. In high technology businesses such as ours, even a slight advantage conferred by a foreign government can dramatically alter competition among firms in current, and more importantly, ensuing generations of products.

In the communications equipment field we are faced not only with subsidies similar to the VLSI approach but also continuing protection of home markets through discriminatory government procurement. Such protection probably constitutes an even greater subsidy to producers than other forms of subsidy. Of course our CVD law does not recognize home market protection as a subsidy, a critical deficiency. This is particularly important where such protection is discontinued but the effects linger on, because the inertia of decades of protection alters competition for years after protection is terminated.

Then there are the antidumping laws. If a foreign market is protected one would expect that the domestic price would be higher than export prices. But how do you get that domestic price when it is treated as confidental by a foreign government agency, as it is by most government telecommunications monopolies? Under current GATT rules we have no legal claim to try to sell to these monopolies, which would enable us to learn what the domestic price is. Hence it is almost impossible to document dumping in particular products, although logically, if home markets are protected, there is strong likelihood that dumping is endemic in a sector like telecommunications.

Even when the dumping laws can be used, do they provide effective relief? Many people seem to think not and you will hear a lot from them today. From our perspective two major deficiencies that deserve special attention are the lack of damages and the problem of calculating cost of production in industries where such costs decline rapidly.

We need a way of collecting damages because a foreign competitor can dump into our market, establish a strong market position, and cause significant reductions in prevailing domestic prices before the remedy can be imposed. The revenue losses to U.S. firms that result can be substantial. In an industry that produces products with short product life cycles those losses can make the differences between financing the next generation of product or dropping out—in which case the dumper ultimately wins.

We also need guidelines for "learning curve" industries where production costs decline rapidly. Assessment of duties becomes very difficult in such industries, as is a determination of whether sales are really below costs. I don't have any answers for the moment on how to deal with this problem, but it is a critical issue if our antidumping laws are to be relevant to high tech industries.

The dumping laws are also susceptible to manipulation by foreign suppliers. By altering a product for the export market, suppliers can try to evade the law by arguing that home market prices cannot be used for comparison. In such cases where government support of R&D expenditures is a major factor, front end expenses may be allocated to domestic products only, so production costs for export products are understated.

Even when a dumping finding is imposed on an end product, a foreign supplier can set up final assembly operations in the United States and dump components which are much harder to use dumping laws against just because of their number and variety. And then that foreign supplier can turn around and claim to be part of the domestic industry, as we discovered in a recent case.

The antidumping laws need to be tightened to deal with these efforts to evade them.

What about section 30[illegible]? The record clearly shows that this is not a road to relief. The United States has not acted against imports unilaterially under this provision and even if it did in one or two instances, the provision would still not be credible as long as the President's decisions are discretionary.

The record also shows that section 301 has not been an effective instrument for negotiating a resolution of the problems raised.

A pecularity of section 301 is that unfair practices that distort U.S. trade identified under this provision which injure U.S. industries are not acted upon automatically as similar practices are under antidumping and countervailing duty laws. In fact they are not acted upon at all. The only explanation for this inconsitency is that the GATT has recognized countermeasures against unfair trade distorting practices as actionable if they can be classed as subsidies or dumping but not if they can't be. Thus, as foreign governments have gotten increasingly sohpiscated in the ways they distort competition while avoiding conflicts with GATT rules, our defenses against unfair practices have become outdated.

Our trade laws remind one of the Maginot Line that protected France before World War II. And the results we are beginning to see on the economic front are not dissimilar.

We need to construct a new defense system against unfair practices that injure U.S. industries. As the President said in his speech before the Commonwealth Club in San Francisco on March 4. "Defending workers and industries from unfair and predatory foreign competition is not protectionism, it's just plain, common sense."

I will not suggest today specific changes in U.S. trade laws because there are at least two different strategic approaches for achieving the same objectives. I would like to propose a set of principles that should be embodied in one way or another in U.S. trade laws.

There should be five basic principles in our defense against targeting practices.

First, any foreign government policy, act or practice that gives a foreign producer an unfair advantage which injures or threatens to injure a U.S. industry in the U.S. market should be subject to automatic countermeasures. It is essential that the authority for countermeasures be broad enough to permit actions with respect to practices that are not yet defined or in use, because the ingenious industrial planners of other nations will otherwise design around any specific set of standards. At the same time, the administering authority should be required to elaborate acceptable standards to the greatest degree possible so that uncertainties will be minimized.

Second, the U.S. Government should be required to actively monitor and regularly report on the existence of market distorting practices and their effects on U.S. industry. Where potential for injury to a U.S. industry is found, the government should be required to initiate formal investigatory procedures to impose countermeasures. Highlighting potential problems may obviate the need for later action. It will also establish a national interest in targeted industries that is not dependent for activation on companies that have transnational interests and who may fear retaliation if they bring complaints. Without that kind of governmental interest, we conceivably could lose some vital national capabilities simply because the major U.S. producers have significant interests outside the United States.

Third, countermeasures should be disigned to fully offset the extent of nonmarket advantages another government has conferred on its producers. If the advantage is greater than an amount of money transferred, then the countermeasure should take it into account. It is only by completely offsetting such advantages that we will minimize the incentive for other governments to use them. Calculating the benefits derived will present formidable but not insurmountable methodological problems, and those types of problems are preferable to countermeasures that are short of the mark. I would stress at this point that care must be taken not to go too far in the other direction—we must not neutralize the normal market-based forces of international competition.

Fourth, the proceeds from countermeasures should be returned to damaged firms and workers. Duties flowing into the coffers of the Treasury Department do little to benefit the injured parties. In industries where revenues from current products determine success in future products, such additional revenues can be put to good use. Without such transfers countermeasures may become a futile effort that only postpones the inevitable loss of a national industry. Once again this will be a difficult thing to do and the question of fair and equitable distribution of the proceeds will likely be contentious. But it is better to try than to let the damages be unrequited.

Finally, our standards of injury should be clarified to recognize both the threat and damage to future competitiveness. In advanced tech industries, where high levels of investment and research are critical to future success, injury can occur without layoffs or red ink. Simply upsetting the dynamics of financing the future from profits on current products can be enough to cause a degenerating competitive position.

I mentioned earlier that there were at least two strategic approaches for giving effect to these objectives. One would build on the current base of antidumping and countervailing duty laws and the other on section 301. Conceivably another would be to use section 337 as a point of departure. Careful consideration should be given to which of these approaches appears most reasonable or whether some combination of approaches would be better.

From our standpoint section 301 represents the most promising base for changes although we also would like to see modifications in the countervailing and antidumping statutes. The reason is simple. Section 301 is a comprehensive statute that can relate to any unfair practice that distorts international competition. Thus, it can be used to counter efforts by other countries to avoid more explicit violations of the GATT or U.S. law. What is needed to make section 301 effective is its conversion to a procedure that parallels current antidumping and CVD procedures by adding an injury test and making countermeasures automatic—at least with respect to practices causing injury in the U.S. market.

I have not addressed the issue of consistency of such changes with the GATT. I would certainly argue that we should be as consistent as possible with the GATT but should only be as constrained by it as our major trading partners are in pursuing their national interests.

The heart of the problem for America's advanced technology industries is how to reduce the risks imposed on us by other governments which have introduced nonmarket distortions into international competition by their targeting policies. Such risks can only be effectively reduced if it is clear to our trading partners that there are significant and credible risks for them in using such policies to penetrate the U.S. market. In short, the U.S. Government must act to create an environment in which U.S. business firms will have the confidence to continue to invest at the levels needed to remain competitive.

[Attachment]

INDUSTRIES TARGETED BY MAJOR U.S. TRADING PARTNERS

COUNTRY AND TARGETED INDUSTRIES

Japan—Computers, microelectronics, electronic instruments, lasers, optical communication, communication instruments, biotechnology, nuclear fusion, robotics, aerospace, telecommunications and machine tools.

France—Computers, microelectronics, electronic office equipment, biotechnology, robotics, consumer electronics, energy conservation equipment, underwater exploration equipment, aerospace, telecommunications and machine tools.

United Kingdom—Computers and microelectronics.

Germany—Computers, microelectronics and electronic office equipment.

Canada—Electronic office equipment, oil, gas and petrochemicals.

Brazil—Computers, aerospace and petrochemicals.

South Korea—Machine tools and automobiles.

Mexico—Autos, computers and petrochemicals.

Source: Derived from "Technology and Trade Policy" by Jack Baranson and Harold Malmgren, a report prepared for the U.S. Government in October 1981.

Chairman GIBBONS. I appreciate the very, very thorough statement that you made, and as I have observed before, I think that what we are seeing in the Japanese instance of targeting is, in my own personal definition, an unfair trade practice. I do not know. Are there any other industrial nations that are following this pattern that the Japanese are following?

Mr. GALVIN. I think that we are finding that in the case of France, England, they are employing some of the same methodologies, and although there may be a lingering or a point of view that is in the deep recesses of one's mind is a hope that they might be able to dominate a given marketplace, I do not think that there is this conscious determination to "dominate" that comes from those entities.

I think that in the case of the Japanese, what one has is that they clearly understand the mathematics of business, and when the Japanese select, say, six companies to be the primary achievers in electronics, they kind of say to themselves, well, each one of them has to have about 10 percent of industry in order to be up on that learning curve and be effective, efficient, have research and development, et cetera.

If you take six companies times 10 percent, you are talking about 60 percent of world industry. You do not find that in a document some place, but this is the common sense that derives from the effect of setting aside a large number of resources to direct a series of big companies to be major in a business.

In the case of France, you are looking at maybe one company that they hope will achieve this, or two companies, and that is hardly going to achieve world domination, but when a nation decides that they are going to resource a number of entities on a large scale, there is only one consequence that one can assume.

Chairman GIBBONS. Looking at the Japanese practice with NTT, there are a family of five or six related—or, I should not say related but competitive companies—that compete for contracts for NTT, and no other Japanese companies compete for the high-tech business of NTT. Then when an American concern is able to get in there and bids, it finds that it has to split the business with the other five or six.

Do you run into that kind of practice any place else in the world?

Mr. **Galvin**. There is no precise analog to running into the kind of practice that you have just defined, sir, but effectively in the post and telegraph entities of most of the nations in the world where that is a nationalized company, there is a practice and propensity to deal with the national entity. They both want to operate the common carrier and they want to serve their common carrier with indigenous business.

I would appreciate making a couple of relevant comments to the Nippon Telephone and Telegraph situation. It is true that Nippon Telephone and Telegraph has operated essentially with national sources of supply. They do not like to refer to the fact that they any longer have families of companies. Through the efforts of our Government we have opened that marketplace, and our company is making a determined effort to earn and serve its say to that market.

We have orders for pagers now and are serving well, and we are talking at the technical level with regard to hopefully serving them with mobile telephones. But as a matter of fact, the share of the market that our company can currently achieve, there is a dividing of the pie on a percentage basis.

There were four suppliers, at one time, serving with pagers. They have now expanded that to six suppliers. We are one of the six and we are given one-sixth of that business. We appreciate one-sixth of that business, but whether or not it is possible to earn one's way into the telecommunications market in Japan to where if we came in with excellent prices, even better than the ones we would come into because we thought we could get 30 percent of the market or 4 percent, whether or not we could get that, we do not know yet.

We are certainly working in a very businesslike way back and forth between NTT and ourselves. How many more Americans could be permitted into that slicing of the pie is something that is speculative, sir. I do not know what their intent or what our opportunities may be.

But, incidentally, very few other companies seem to be willing to make this effort because there is an inertia that develops as a function of tradition, and the tradition has been that you could not get business there and it was very hard. And that spirit of protectionism that has existed across the land there is very discouraging.

In a few companies like ourselves who just plain bit the bullet and said well, we will do what appears to be counterintuitive and see if we cannot break through, and we are making some success in that regard.

Chairman **Gibbons**. Thank you.

Mr. Schulze.

Mr. **Schulze**. Thank you, Mr. Chairman.

Mr. Galvin, I thank you for your testimony. You gave us a list of circumstances which might be involved in targeting. It seems to me what we have to do is develop a type of radar which would detect targeting—an early warning system, perhaps. Have you given any thought to a criteria which could be used to clearly define targeting, or do you think that we have to put a list of elements and say some or all of these are involved?

That would be somewhat difficult.

Mr. **Galvin**. I think your analogy to the term radar is remarkably perceptive, sir, because radar is receiving signals. I do not know that I can deal with the issue of criteria precisely yet, but one of our recommendations is that the U.S. Government should purposely put its antenna up. It should start really listening for this thing on an active basis versus just sort of passively sitting back.

I believe that the combination of the signals that we receive from the marketplace—we, the practitioners of business—and the signals that the government could receive in some instances better than we because we do not have the access or the right or maybe even under the antitrust laws the privilege of digging into some kinds of things, that if you were listening to and then we knew that there was somebody down here in Washington who was receptive to hearing more about these things, we would have in effect a signal collection system and once you see what this device or what this animal looks like you start to recognize what it is.

So I think the process starts with an intent and assumption of objective, a purpose by the government that yes, there is something out there and we had better start taking an active interest in understanding it and a willingness to appreciate it when we see it.

Part of our problem—and there is a sense of discouragement by those of us who interact in this area—is that we keep sending signals and someone says yes, but it is not strong enough or I cannot quite believe it, or you must have a self-serving interest. And, of course, we have a self-serving interest. We all have a self-serving interest.

It can be enlightened, it can be quite fair. So there has got to be a willingness to receive the signal. In technology we speak of that, of matching impedences. If people down here are not willing to hear or listen, it is kind of hard to get the signal through, so there has got to be a willingness. There has to be an intent here that we think is one of our five points of hear us out. You are hearing us out. We thank you very much for that.

But then elsewhere, throughout other parts of the Government, let's decide to listen to these people. Maybe they have something.

Mr. **Schulze**. That is one of the reasons for these hearings, and that is part of our function. But it is or I think will be very difficult to draw up guidelines or specific legislation to say this is targeting or this is not targeting. And if you have any further thoughts on it as time goes on, I am sure the committee would be happy to have them.

Mr. **Galvin**. I think I gave you the beginnings of thoughts, sir. But with regard to fulfilling your request, I have been the instrument of putting together a coalition of companies in the high technology industries whose purpose is in a short period of time, in a few months, to produce such a product, such a series of ideas, and we hope to come back to the listeners in the course of this summertime with the beginning of that product.

I would only urge in terms of the sense of receptivity to this that whereas it is going to be difficult, it is not insurmountable and it can be done. And you can do it by an inductive observation here of conditions.

I think further, sir, there is a need for a change in view that, you know, maybe the American point of view, even if it is not precisely legalistically proveable, ought to get a little respect on some of these points of view versus, well, it does not fit a precise technical provision of a court of law.

Mr. SCHULZE. Thank you. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Russo.

Mr. RUSSO. Thank you, Mr. Chairman. Mr. Galvin, last week in testimony that we received from Mr. Tanaka, he asserted that the 16K RAM had lost its competitiveness because American companies were unwilling to put enough money into the marketplace to develop it.

He made the same statement about the 64K RAM, that it is not targeting by the Japanese as much as it is that American companies are unwilling to make the capital investment in expansion necessary to obtain a bigger share of that marketplace.

It is difficult when you sit up here, when you see one individual saying one thing and the other saying something else and I am trying to determine who is right. Is it accurate to say that a lack of capital investment in those areas was a major cause of our lack of competitiveness with the Japanese?

Mr. GALVIN. The statement to which you refer or the reference to which you refer is partially correct, sir. But I think you have to understand some significant associated reasons as to why it is partially correct.

We operate a system here of the private ownership of the means of production and the private risk of the individual form, and each firm has its own elasticity of being able to make its investments at given time. I think all the firms that have elected not to go into the 64K RAM who had been competitors in the 16K RAM had varying reasons why they did not elect to make their investment.

But a prominent reason is that each of them were at private risk and that in the Japanese situation five or six companies, the six companies that moved ahead, were able to claim resources from the national treasury of the aggregate wealth of Japan in a mode that did not place their company at individual risk, and that is a very, very big factor here that we are going to have to come to understand at the political level.

Do you or don't you have a riskless society? I hope we will keep our risk society, but some companies cannot afford to risk if they think the other fellow is at no risk.

Mr. RUSSO. One of the things I recall from his testimony I believe he said that if you look at the semiconductor industry you will find that the total contribution from the private sector and the Government in the U.S. was far greater than the Japanese counterparts put together. So that we were doing enough research and development, we were providing enough government assistance in the area, that we should have been competitive. What more does it take to be competitive?

Mr. GALVIN. Well, I disagree with that conclusion. I do know that there are studies——

Mr. RUSSO. I am trying to obtain a copy of the testimony so I can quote from it.

Mr. GALVIN. I am aware that such references are made, sir. But there are explicit and implicit or there are subtle factors that very much determine this business of risk or risklessness.

First off, as a company we have gained very, very modestly in terms of any direct dealings with the U.S. Government on the semiconductor business. We have earned all of our ability to do research and development from the business we have done in the competitive marketplace. But when you have concessionary loans, when you have indicative loans, when you have low-cost loans, when you have forgiveness loans, when you have an environment that says please go do it for the country, go compete hard and we will see that we all succeed together, that makes a big difference in terms of the attitude of an investor in deciding to commit a $50 or $100 million investment on the front end.

And that is a colloquialism in our business for a processing plant. And the thing that I think is very hard to accept or understand at the political level is that it is these subtleties, these increments that make a big difference about a guy that is running a $300 or $400 million company who knows he can do the job, but, wow, if the Japanese have this riskless situation, maybe they will overwhelm me.

And maybe I will lose money too long and I cannot stay in business. I am betting my company.

Mr. RUSSO. One last question. Rather than devising protectionist policies and imposing import quotas and restrictions and the other things that are being talked about, wouldn't the best way to deal with this problem be the way the Japanese do it, to target in our own country, have the Federal Government provide research and development?

What would be wrong with that? Wouldn't that be a way of being able to compete with them at their own level and see who is the best?

Mr. GALVIN. No. That would fail in this country, sir. That is in spite of the fact that there are a few useful cooperative efforts that are going on in the industry. But——

Mr. RUSSO. Why would it fail?

Mr. GALVIN. I will not take you through the whole argument because you cannot take the time between now and lunch, but I am going to just hint at it and I would be glad to expand on it for you, sir.

Mr. RUSSO. I would appreciate it if you would just provide me with an expanded answer.

Mr. GALVIN. I will give you a 30-second outline. The Japanese have been at the development of their collective enterprise system since 1920. They have ebbed and flowed in terms of learning how to do what they are doing. They have developed a consensus in their society that they can operate this way, and it would take us 30 to 40 years as a country to get around to doing this thing well or as well as the Japanese have done it.

And then we would have put in place the seeds of probably the destruction of both theirs and our society, because ultimately when these things get too centralized they finally get overcontrolled and they finally goof themselves up. But in the meantime clearly they have made it work currently, but we could not make it work in this society and I strongly urge that you not push that too hard.

Mr. Russo. I just raise it because in Mr. Tanaka's testimony he talks about how this targeting developed as a result of the Supreme Commander of the Allied Forces during the occupation, the advisory groups they have had established.

Mr. Galvin. I would say that is an interesting coincidence, but the history goes back to the 1920's, the 1930's, and then it is amplified in the 1940's and the 1950's. I think the Japanese were able to conceive this very much on their own.

Mr. Russo. Thank you, Mr. Chairman.

Chairman Gibbons. Mr. Pease.

Mr. Pease. Thank you, Mr. Chairman.

Mr. Galvin, I would like to thank you for your first-rate testimony and for the lead which your corporation is taking in trying to increase exports for the United States. I think it is very commendable.

I agree with the thrust of your testimony and I infer that the U.S. Government should take the lead to protect our economy from unfair trade practices on the part of our trading partners, without regard for a specific corporation. In other words, rather than waiting for United States Steel Co. or Motorola or some other company to file a complaint, there is no reason why the U.S. Government can't be monitoring what is going on and initiate action by itself.

Do I read you correctly in that?

Mr. Galvin. Yes, sir. I think that is one very important plank in our platform.

Mr. Pease. OK. Since we are running short of time, I will ask your thoughts on a couple of very general questions that have puzzled me for a long time. It occurs to me that, to use Japan as an example, if the Japanese are subsidizing certain industries with low interest loans and concessionary loans, the sort of thing that you mentioned, that that has to show up as a cost to the whole society, that somebody has to pay the cost of that subsidy.

If they are getting money at one rate and loaning it out at a higher rate, that means it is a Japanese federal government deficit, which has implications for their interest rates, or it means higher taxes on Japanese citizens, which presumably would increase the pressure for higher wages or make the Japanese workers discontent and so on.

There is no free lunch. When subsidies occur someone has to pay for them. I would assume these subsidies would show up someplace else in making that economy or that society less able to compete with us, for example.

Where is this showing up in the case of Japan? Are not these costs associated with subsidies for the whole economy, and are they not bound to show up someplace and weaken Japanese competitiveness?

Mr. Galvin. The Japanese have placed a most significant burden on their consumers. I will give you a little example. Back years ago in the television business, when the housewives of Japan discerned that they were paying a certain high price for television sets and discovered that they were being sold for much lower prices in San Francisco, they literally started to boycott.

The Japanese have put a tremendous burden on their consumers. They do not have a social security system in Japan. You do not have the same degree of infrastructure in Japan. They now recognize they are going to have to go back and revisit that. They have been delaying those kinds of things for an inordinate length of time.

But if the strategy that they are working on works, if they cause that the rest of us start to react in a defensive or a disinvesting mode and they really luck out and cause that they get a big part of the market, they do get paid back. Now, if they get 60 percent of the marketplace they do earn some money back.

It is that confidence level in making the investment that I keep coming back to, sir. So if it had not worked it would have been a tragedy, but it is currently working. But who is paying for it? I think it is the native.

Mr. PEASE. Apparently the consumers are by and large willing to accept that sacrifice?

Mr. GALVIN. Yes, sir. Again, it is a part of this history that I was alluding to when Mr. Russo asked his question before. The Japanese in 1945, 1946, and 1947 had to decide for simple survival reasons to go along with a system that was good for the whole and not just for me individually.

Mr. PEASE. One last question. If the Japanese are targeting and doing well in some specific industries, which you have identified, they must be neglecting others. The Japanese nation is a nation of about 100 million people. It seems to me that they cannot do everything in the world. They cannot dominate every industry.

And I am wondering if there is not an opportunity for us, at least if we cannot compete with them in automobiles, for example, to target the industries that they decide not to target and go after those. Is that a possibility?

Mr. GALVIN. I think there are certainly tradeoffs like that. I think that in general—and this is much too general—the Japanese have determined in their dream for the future that they will emphasize the value added businesses, high technologies and such, and those businesses that require an inordinate amount of energy or certain kinds of raw materials they will start to deemphasize.

So whereas the Japanese have been very effective in, let us say, aluminum or steel and possibly even some day cars, they may elect to deemphasize certain of the businesses, shipbuilding, that they were good in 20 years ago, because they represent a mix of resources that are no longer as effectively useable.

They clearly have a national strategy, and one has to admire it from an intellectual point of view in the way they implement it. So yes, they will trade those things off, but I do think that at least one thing that appears to be clear is that the whole mix of high technology businesses, not just electronics, is one of those places that they have selected to be very successful.

Mr. PEASE. Thank you very much.

Chairman GIBBONS. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

I would like to welcome Mr. Galvin before the committee. He is, as you know, the CEO of one of the premier high technology firms in the world, and I am privileged to represent the district in which

Motorola's headquarters are located. Mr. Galvin and I have in the past discussed the question of free trade and protectionism, and we are in mutual agreement on the desirability of free trade and the reduction of trade barriers.

For all of that, I think we both agree that it is important that if there are evidences of impediments to free trade there must be remedies applied, and I think in many instances the Japanese have demonstrated a certain inventiveness in circumventing both the spirit and the letter, at times, of our countervailing duties laws.

I think that Motorola is to be commended for its perseverance, and most especially with the pocket pagers, in penetrating the Japanese market, because it was a long and arduous effort on the part of Motorola.

I think Mr. Galvin's testimony, particularly about the experience Motorola had with the 64K RAM, is an example of how the Japanese have continued to violate at least the spirit of free trade. And I would certainly hope that the committee would take very seriously as a guideline the five principles that Mr. Galvin has presented today.

Mr. Galvin, when I was in Japan the summer before last, we went there under the auspices of the American Productivity Center and we had the opportunity to visit many of the businesses. One of the things that Japanese businessmen explained to us is that it is a fairly routine practice in Japan to get these targeted industries together at the instigation of MITI, which is much like, I guess, our Department of Commerce would be here, to determine areas where research and development would be likely to make breakthroughs, and that, unlike the practices of you and say Zenith and RCA and others, engaged in your own independent R&D efforts looking for breakthroughs, in Japan it is pooled out and there is seed money that is put up by MITI to help in that effort.

They told us that at the time that it was to be repaid, but it was interest-free money put up by the government to help promote R&D. And when we asked them, well, who gets the patents, their attitude was a somewhat puzzled response like, who cares. Most especially I think in the high tech field, it is virtually impossible to retain some patent monopoly more than a few months anyway.

That just struck many of the members of our delegation as being a sensible policy, and one of our colleagues, Jim Scheuer, in fact spoke eloquently before we left on our antiquated antitrust laws in this country, which were crafted in the previous century when we were in the infant stages of industrialization, and now we are talking about massive world markets. And he was determined, as I was and I think virtually everyone present, to come back and seek reforms of our antitrust laws.

Do you think that is an area that is in need of reform to permit greater opportunities for American business to work cooperatively in making R&D breakthroughs? And then get proprietary when it comes to product lines? Is that something that would be adaptable here?

Mr. GALVIN. Yes, sir, I think that there should be some relaxation. I think that there is going to have to be that happy balance between making sure that it does not go so far that Texas Instruments, Intel, and ourselves could somehow conspire to dominate the semiconductor business in this country, and we would not intend to do so under any circumstances.

Yes, that ought to be liberalized and we should be able to go to the Justice Department and get something more than just a letter—and I cannot use legal terms—that says, well, we take cognizance of what you are doing, we do not see anything wrong with it, but of course if we see something wrong tomorrow we will maybe put you in jail.

I think we can straighten those kinds of things out. But I do not think I would want to leave the impression that, having done that, that the American private enterprise society should depend too much on the fact that we will all collectively get together, particularly under the aegis of a government. Forgive us, we would not trust the guidance that you gave us too much.

The Japanese businessmen frankly do not like it a lot themselves. They resist it a great deal and find some mistakes that are made.

But what you have got to do, in my estimation, is to decide whether you want to preserve the American private enterprise system of risk taking, which has brought this country and this world a whale of a long way, and make sure that there are the economic neutralizers when people do not have to take the basic risks.

With regard to the patent item, sir, we were frankly concerned that this was a means of in effect taking a patent off the market, because if it—in a collective entity in Japan, if it had been held to the ownership of some collective entity, how would we ever get a cross-license agreement with Hitachi or Fujitsu? They would say, we do not own that, we are just a licensee of this. Well, they would have the license and maybe we would not have. We do have to have give and take with each other. That is an opportunity for monopolizing right there.

Mr. CRANE. I am wondering if you have some specific recommendations on how maybe the antitrust laws might be liberalized in our late 20th century, whether you have specific proposals or you might be able to prepare some that could be submitted to the Judiciary Committee to take a look at.

Because we have had a couple of followup meetings with some of the people from Justice and attempted to explain this in the presence of some businessmen at those meetings, and one of the responses we got from Justice is, well, what you have just described would not be a violation of our antitrust laws, to which all of the businessmen present at that meeting registered shock, and it seemed to come as a great revelation if that was true.

I think that there certainly is dictated some clarification of what the law is in that area, and if you have specific thoughts I would welcome them and I could guarantee that we would get them to the Judiciary Committee.

Let me ask another question. I agree with you wholeheartedly, incidentally, in response to our colleague from Illinois, Marty Russo, on this question of targeting. And I think the instance you cited of shipbuilding is even proof that the Japanese can make mistakes when government is misallocating scarce resources.

And certainly I think it would be a profound mistake for us to pursue that policy. The private sector has pioneered and to its credit it has succeeded, and I think all too frequently we can find, when you get government direction, as you say, we are less enlightened than you working in the private sector.

One of the things that you mentioned in your testimony was the low-interest loans. Now, the Japanese have financed as a percentage of gross national product larger deficits than we have here, at a fraction of the interest rate level. And one of the ways in which they have managed to do that is because of the enormous pool of capital that they have generated over there by providing incentives to private savings.

And they asked us the question, why do you people, from whom we learn so much, punish savings? And they got into specifics, like when we had the double-digit inflation rates and if you put your money in an S&L at 5¾ percent at the end of the year you were behind where you started, and we taxed the interest on top of that.

And for all practical purposes they do not tax interest and dividends. I have had similar legislation like that in here to provide greater incentives to expand capital formation.

Do you think that this is an area that we ought to explore in terms of providing more available money at less cost, most especially based on the experiences we have been through in the last 3 or 4 years?

Mr. GALVIN. Fundamentally, yes, I do, sir. Savings are the base for investment and if we do not have savings we do not have adequate investment.

I would point out that there are so many interrelated factors that have to be understood with regard to the Japanese situation that if you permit yourself—and I think you are almost obliged to entangle yourself in some of these things, to understand the significance.

You would not like getting to the savings rate in Japan the way they got there, because the Japanese have to save for their own retirement because there is no retirement system in Japan of any consequence.

Mr. CRANE. If you will permit an interruption, I am not sure there is here either.

Mr. GALVIN. At least we certainly have a methodology for it, sir. And I do not think politically we want to change, or you would want to change, the process. The Japanese are obliged to save. There are all kinds of little associated subtleties with that.

The Japanese are allowed to save at one post office, and there his interest rate on that loan is forgiven for a certain amount. But most Japanese save at 5 and 10 post offices, and they sort of wink at that. Well, you know, we wink at things, too.

But the point is, the process over there is very subtle but very significantly different than ours. I admire the fact that they have a high savings rate. I think it is one of the many implementable things that they have done that is very, very good. But how they got there is something you had better understand. It is not just saying, let us have a higher savings rate. You cannot do it by just a few little strokes of the pen here.

The whole system is organized to where the industrial entities have had made available to them resources from this collective enterprise.

Mr. CRANE. I have just one further question, Mr. Chairman.

One of the questions again that the Japanese put to the members of our delegation, and that included academicians and businessmen and politicians—unfortunately the unions were not represented because it coincided with the PATCO strike and they would not cross the picket line to come. But they put the question to us as to why in our society we insisted upon these adversarial relationships of labor pitted against management, management—or government pitted against management, whereas they had much more cooperative working relationships there.

And a part of it I am sure is cultural, and the insularity of Japan, and most especially coming out of World War II, dictated a more cooperative relationship.

But I am curious about is areas in which our own Government could at least be less adversarial in terms of its general relationship toward business and recognize that, as John Kennedy once said, the rising tide lifts all boats.

Do you have thoughts as to specific things that you might recommend to the committee in the way of legislation that could create a better climate for all of us to prosper well in this country and to guarantee that business will survive and flourish, and that that means expanded job opportunities, and that means also as a fringe benefit expanded revenues to government?

Mr. GALVIN. Yes, we do have specific suggestions, which I will not attempt to outline precisely here. Directly in the trade area, let us take injury, for example. We are obliged to be contentious because the specification of what is a material injury is one that has such limited criteria to it that we have got to scrap with each other.

The determination of what is a potential injury—I think that if we can come to grips in this specific area, the things you are having hearings on—and we will have specific suggestions for you with regard to the issue of injury—and recognize that in business or in sports a little injury is the difference between success and failure. You only have to miss by a second from winning the race, and you only have to miss a little bit with the customer before you lose the whole order.

And so often the presumption is in this trade area that, well, gee, you are still in business, you are still collecting your salary; you have not been mortally wounded yet, have you? Why do we have to do anything?

We have got to work in anticipation of the problem and deal with the increments, and the increments and the timing are all the difference in the world between success and failure.

Mr. CRANE. I thank you very much, Mr. Galvin, for your testimony, and again would urge my colleagues to look over very carefully the five principles set forth today in Mr. Galvin's testimony.

And thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, Mr. Galvin. I realize we have held you pretty late here. You have made some excellent suggestions, and I have been giving some instructions to the staff up here so that we can try to follow up on them. We will be working with you.

I wish you could encourage the rest of your fellow businessmen to come here and help us with the problem. We find a reluctance of them to come to Congress, because sometimes it takes on an accusatory type of attitude. But we need your help.

We need to find ways through this problem, and you have been very helpful, not only this morning but in the contacts of your people here in Washington, helping us understand the problems we face.

Thank you very much.

I want to say to the AFL-CIO, we will have you right after lunch, because we are encroaching upon the luncheon break that I announced.

Our next witness is our own colleague, Mr. Shannon.

We had better set 1:45 p.m. as right after lunch, and then we will go into the administration witnesses after that.

Mr. Shannon, we welcome you here. You need no introduction.

STATEMENT OF HON. JAMES M. SHANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. SHANNON. Thank you, Mr. Chairman.

If I could, I would like to submit my testimony for the record. I have a short statement. I am not going to hold you for long.

Chairman GIBBONS. Well, we will be glad to listen to you.

Mr. SHANNON. Let me say that I enjoyed Mr. Galvin's testimony, although I am not going to do anything to encourage his efforts to invent telephones that we cannot get away from. I do not think that that is a very encouraging thing at all.

Mr. Chairman, I want to thank you and the committee for this opportunity to be here today, and I want to express my gratitude for the diligent work of this subcommittee and its staff. Already in this new Congress you have been tackling the formidable problems surrounding the GATT and our trade relations with Japan.

The subject today is trade remedies. Given the unfortunate international trend away from free trade, this issue of remedies has taken on a new urgency. The restrictive trading policies of our competitors have had an increasingly detrimental impact on a number of our industries.

Today I would like to focus particularly on foreign trade practices that are damaging our high technology industries, and I want to look at remedies we can use in order to give these industries a fighting chance for survival in the years to come.

I should say that we would be mistaken if we viewed high technology as a panacea for the serious problems of the economy and unemployment that continue to trouble our Nation. But by the same token, we should recognize that high tech will be a major part of the American economy from now on.

The last thing we want to see happen is to have American workers sitting in front of foreign-made video screens and operating off of foreign software. But to prevent that from happening, we need to take decisive action.

Some of what we must do is contained in the High Technology Trade Act which, with your cosponsorship, Mr. Chairman, I have reintroduced in this Congress. The bad news, though, is that we have some tough competition headed our way and no clear trade policy to deal with it. Ten years ago, with 5 percent of the Earth's population, the United States generated about 75 percent of the world's technology. Today our share is about 50 percent. In another decade, according to the Department of Commerce it will be only 30 percent.

That is not because we will be generating less, because in fact we will be generating a great deal more. But the other 95 percent of the world will also be contributing.

It is up to this subcommittee and this Congress to see to it that we are not caught unprepared and that our high technology industries are not eroded to the point of virtual extinction. Yet, look what has happened in the past to some of our fundamental industries.

The auto and steel industries are the frontline casualties of our national lack of preparation. Today we import 26 percent of our automobiles, 60 percent of our TV's, and 35 percent of our textile machinery. Twenty years ago, imports accounted for less than 10 percent of the American market for each of these product areas.

In short, what we are seeing is that the entire context for trade is changing dramatically. There are new players, new assumptions, and new rules. Our industries, both old and new, need remedies that work. We need approaches that are prompt and effective.

Anyone who is familiar with the current problems cannot help but feel that we must strengthen and clarify section 301. We need authority and procedures to eliminate unreasonable foreign trade practices, particularly in the investment and services area, which is so essential to the development of foreign markets for our high technology products.

The High Technology Trade Act would expand the President's current authority under section 301. Let's start using that section and let's use it as a stick, not some kind of feather-filled pillow. And let's think about how we can speed up our response time. Let's consider the use of countersubsidy and regulatory action. If the threat of retaliation is necessary in order to gain open markets, then let's be frank and say that we are willing to play tough.

The high tech industry is fast paced. Its success will depend in large measure on our ability to sell products abroad, and that, in turn, is critically linked to the trade and investment policies of our trade partners. When they play unfairly, we must be able to respond quickly and effectively.

The high tech industry does not need protection, but it does need the assurance of an equal chance to compete. And if we don't provide that assurance now, we will only end up having to consider protectionist tactics later.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. JAMES M. SHANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, I want to thank you for this opportunity to be here today. I want to express my gratitude for the diligent work of this subcommittee and its staff. Already in this new Congress you have been tackling the formidable problems surrounding the GATT and our trade relations with Japan.

The subject today is trade remedies. Given the unfortunate international trend away from free trade, the issue of appropriate, cost-effective remedies has taken on a new urgency.

The restrictive trading policies of our competitors have had an increasingly detrimental impact on a number of our industries. You will hear testimony today from concerns ranging from footwear to leather to autos and steel. Each of these industries has been devastated by the deadly combination of restrictive trade practices by foreign competitors, and by domestic remedies that are too slow, too costly, and sometimes just not specific to the unfair trade practices involved. I urge you to consider carefully this discussion of foreign barrier problems, existing trade remedies, and suggestions for change.

Today I'd like to focus particularly on foreign trade practices that are damaging our high technology industries. And I want to look at remedies we can use in order to give these industries a fighting chance for survival in the years to come.

I should say that we would be mistaken if we viewed high technology as a panacea for the serious problems of the economy and unemployment that continue to trouble our nation. But by the same token, we should recognize that high tech will be a major part of the American economy from now on.

The last thing we want to see happen is to have American workers sitting in fronting of foreign-made video screens, and operating off of foreign software.

But to prevent that from happening, we need to take decisive action. Some of what we must do is contained in the High Technology Trade Act, which, with the co-sponsorship of Chairman Gibbons, I have reintroduced in this Congress.

I hope that in later hearings we'll be able to address in more detail the specific provisions of that bill. Let me say, though, that the High Technology Trade Act would clarify and strengthen section 301 remedies. It would extend the President's section 301 authority to cover high technology and investment. Because of high tech's reliance on sales and service, investment in foreign plants is essential if American firms are to compete abroad. And right now, their hands are often tied.

Before examining in more detail the remedies that are so badly needed if our high technology industries are to succeed in the international marketplace, let me review some facts.

The bad news is that we've got some tough competition headed our way, and no clear trade policy to deal with it. Ten years ago, with 5 percent of the Early's population, the U.S. generated about 75 percent of the world's technology. Today, our share is about 50 percent. In another decade, according to Department of Commerce estimates, it will be only 30 percent. That's not because we'll be generating less—because in fact we'll be generating a great deal more. But the other 95 percent of the world will also be contributing.

It's up to this subcommittee and this Congress to help see to it that we're not caught unprepared, and that our high technology industries are not eroded to the point of virtual extinction. Yet look what has happened in the past to some of our Nation's "fundamental industries."

In the last 20 years, our share of the world market has declined by almost one-third in autos, by 40 percent in agricultural machinery, by 50 percent in telecommunications machinery, and by 55 percent in metal-working machinery.

The auto and steel industries are the frontline casualties of our national lack of preparation. Today we import 26 percent of our cars, 60 percent of our TV's, and 35 percent of our textile machinery. Twenty years ago, imports accounted for less than 10 percent of the American market for each of these products.

In short, what we're seeing is that the entire context for trade is changing dramatically. There are new players, new assumptions, and new rules.

The problems of targetting and of the national industrial policies of our competitors have been explored by this committee—as recently as last week with your hearings on Japan. What we're realizing is that there are many ways to protect and nurture an industry—and many of those approaches are immune from the GATT process, and from existing U.S. trade remedies. Other countries provide their industries unfair advantages through the use of tax subsidies, preferential treatment, assured markets, and import protecting during the early stages of industry development.

One aspect of foreign protectionism which is especially troublesome to high technology industries concerns foreign direct investment. Nowhere do the rules of international trade seem to change with such frequency as in this area. The policies of individual nations are especially important, since foreign direct investment has a powerful impact upon newer industries, such as high technology.

The U.S. approach towards foreign direct investment has been consistent. Our policy was articulated by the State Department in 1977. We agreed that our approach would be "to neither promote nor encourage inward or outward flows or activities."

Unfortunately, we are almost alone among host countries in eschewing any effort to control or direct the flow of incoming investments. Ours is probably the most open market in the world for foreign investors.

But look how other nations treat us in return. American investment abroad is frequently subjected to a dazzling array of performance standards, capitalization requirements, and explicit export objectives.

There is a growing trend in which host countries use performance requirements and investment incentives to alter investment and trade flows by maximizing the movement of foreign investment into their economies on terms which are supportive of their national goals.

These kinds of investment barriers are especially onerous to U.S. high technology companies. The sale of technology, developed at great costs, is the stock-in-trade of these companies. Investment restrictions are a means by which other nations attempt to have our companies turn their know-how over to them. The prospect of forfeiting information and technology is something that our companies want to avoid—for obvious reasons. They're in a bind, and it's the job of this Congress and this government to give them a hand. We need to show our trade partners that we know what's at stake, and that we're willing to play tough in order to support and preserve our high tech industries.

Anyone who is familiar with the current problems cannot help but feel that we must strengthen and clarify section 301. We need authority and procedures to eliminate unreasonable foreign trade policies, especially those involving foreign direct investment.

As things stand, our traditional industries face extreme difficulties when they try to confront trade barriers. Faced with a situation involving countervailing duties or dumping practices, many smaller companies are left totally helpless, and larger ones are forced to severely strain their own resources.

The current remedies are problematical. The increasing complexity of these cases, the lengthy consultation process, the on-going and high legal costs, and the difficulties of proof for American companies who must uncover and document unfair trade practices by foreign countries, are independent factors which retard the remedy process.

The ideal that all of us want to pursue—the ideal of free trade—seems to be eluding us. And as Americans, we run a severe economic risk if we continue to play by free trade rules at a time when other nations are turning their backs on us. The result could be especially damaging in the high tech area. Our high technology industries confront many of the same barriers that have so undermined many of our older industries. And they stand to be particularly affected by barriers to foreign direct investment and trade in services, the very problems for which we have yet to provide national or multilateral relief.

We need to keep pushing for some consensus and agreement on these issues, and for the eventual promulgation of a GATT code for trade in services and foreign direct investment.

But there are things we can and should do in the meantime.

We have section 301. Let's make use of it.

The High Tech Trade Act expands the President's current authority under section 301. Let's start using that section, and let's use it as a stick, not some kind of feather-filled pillow.

And let's think about how we can speed up our response time. Let's consider the use of counter-subsidy and regulatory action. If the threat of retaliation is necessary in order to gain open markets, then let's be frank and say that we are willing to play tough.

This is not the first time that this country has been caught unprepared. Just look at our steel and auto industries. The high tech industry is fast-paced, like no other in the history of this nation. Its success here will depend in large measure on its ability to sell products abroad. And that, in turn, is critically linked to the trade and investment policies of our trade partners.

This industry does not need protection. But it does need the assurance of an equal chance to compete.

And if we don't provide that assurance now, we'll only end having to consider protectionist tactics later.

Thank you, Mr. Chairman.

Chairman GIBBONS. You have verbalized very well the thoughts that keep running through my mind about what we need to do. Obviously, the world has changed, and obviously America has changed. And while we are looking at some laws that are comparatively new as far as being on the statute books, even they have not kept up. It does take too long. It is too expensive. There is not enough predetection and there is not enough immediately available data for people to come in and get the kind of protection they need.

That is the purpose of these hearings, to try to get specific comments from the people who are out there working with this on a day-to-day basis. The high tech bill, as you pointed out, should be a high item on our agenda and it will be a high item on our agenda as soon as we can get some of these things out of the way.

Mr. Pease.

Mr. PEASE. Mr. Chairman, I don't have any questions, but I too value very much the testimony of our colleague. I am pleased to have his contribution.

Chairman GIBBONS. We will recess now until 1:45, at which time we will take up the AFL-CIO first, and then go perhaps to the administrative agencies.

Mr. SHANNON. Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, sir.

[Whereupon, at 12:45 p.m., the hearing was recessed to reconvene at 1:45 p.m.]

AFTERNOON SESSION

Chairman GIBBONS. Good afternoon, ladies and gentlemen. I am sorry I'm 5 minutes late. The committee will come to order.

Our first witnesses this afternoon are Dr. Rudolph Oswald and Mr. Steve Koplan, representing the American Federation of Labor and the Congress of Industrial Organizations.

Let me say, right after this panel of witnesses we will go to the Textile and Apparel Import Steering Committee.

Welcome, friends. I am glad to see you again.

STATEMENT OF RUDOLPH A. OSWALD, DIRECTOR, DEPARTMENT OF ECONOMIC RESEARCH, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE, AND ELIZABETH JAGER, ECONOMIST

Mr. OSWALD. Mr. Chairman, I am happy to be here and thank you for this opportunity to present the AFL-CIO's views on this very important issue. Accompanying me are Steve Koplan of our legislative department and Liz Jager, economist with the AFL-CIO.

The devastation now suffered by millions of Americans from floods of imports, from the export of technology and jobs, and from the trade impact of an overvalued dollar has compounded the serious economic problems of the U.S. economy. It is clear, therefore, that the United States does not have effective trade remedies. It is time for a change.

Last February the AFL-CIO Executive Council stated:

> The United States faces unprecedented international trade and investment crises in 1983. "Begger thy neighbor" policies have become the order of the day as other nations restrict U.S. products while pushing their own exports into the United States. The U.S. deficit in trade rose to a record $47.8 billion in 1982 and may double in 1983.

> No one disputes the vital importance of trade, but it is time also to recognize its frequent adverse impacts upon workers and industries and to take steps to balance the equities in the interests of all.
>
> Labels of "free trade" and "protectionism" no longer serve any useful purpose. Tariff and nontariff restrictions are all but universal among America's trading partners, while American producers and marketers remain defenseless."

That full statement, Mr. Chairman, is attached as Appendix I to my statement and I ask that it be made part of the record.

Chairman GIBBONS. Yes, sir. Your entire statement and the appendix will be made a part of the record.

Mr. OSWALD. Thank you. That statement adopted by the Executive Council refers to many of the issues before this subcommittee, as well as other issues which are being discussed elsewhere in the Congress as they relate to trade.

There is no one single answer to the trade problem, but rather, a number of actions must be taken to offset and alleviate the harmful effects of trade on U.S. industries and U.S. workers, and to enhance the position of U.S. industry in a competitive world.

We appreciate the subcommittee's interest in determining how the expense and time involved in processing cases under current procedures might be reduced in order to assure U.S. industry and labor, including small business, access to trade remedies. Money and time are key issues, but the problem is greater than that. Clear criteria and effective remedies are lacking.

Obviously, both the so-called fair and unfair trade remedy statutes need improvements. Fair trade laws to alleviate trade-induced injury and unfair trade actions, such as antidumping and countervailing duties, should have better procedures and more effective remedies.

The help that has been promised to injured industries for 20 years has not become a reality. The safety valve promised to those who are affected by tariff cutting and import surges, the so-called escape clause, now section 201 of the Trade Act of 1974, has never been effective. This mechanism promised to help industries seriously injured by imports.

While 201 actions require expensive and extensive documentation, they also involve vague criteria for the International Trade Commission to use in making determinations. The result is that findings of injury seldom result.

In addition, even if the ITC finds injury on the facts and recommends that section 201 be invoked, as intended by law, the President frequently decides not to implement the action.

Since 1975 when the Trade Act of 1974 became law, these many discouragements have caused only 47 cases to be filed, because of the laundry list of criteria which allows the ITC to pick and choose its reasons for nonaction. The ITC recommended relief in 27 cases, and only 11 have resulted in any Presidential action to actually give relief. The relief has never been enough to allow the injured industry to recover from the import assault. Cases are not even being filed because U.S. industries and U.S. workers see no results.

In the modern world, injury can be so swift and so sudden that the damage can be irreparable while cases are being processed. Imports can double in less than a year. During this recession, the drop in U.S. sales has impinged in many industries solely on U.S.

producers, while imports absorbed none of the sales declines. But the escape clause has no provision to deal with such problems.

Therefore, the AFL–CIO believes that section 201 of the Trade Act of 1974 should be overhauled to make the escape clause: One, fair and predictable in its application; two, reasonably accessible to all parties suffering import injury; three, effective in strengthening the import competitiveness of American industries; and four, timely to provide swift relief.

The escape clause provisions of the Trade Act should be revised to allow quick relief from trade injury. When a U.S. producer loses sales to foreign producers and reduces his production and work force accordingly, he knows only that trade elements have injured his business operation and his workers note the injury in the resulting layoffs.

At the present point, the injured parties don't know if the injury was caused by so-called unfair trade practices, by fair trade practices, by the rising value of the dollar, by a foreign currency devaluation, or one or a combination of these causes. All they know is that the injury is trade related.

Such injured parties should be able to receive temporary relief from the injury and should receive help from the U.S. Government to make the appropriate case under the various provisions of the Trade Act that deal with specific relief measures for certain unfair and injurious trade practices. Many aspects of foreign governmental subsidy programs and dumping activities are more readily ascertainable by U.S. governmental agencies than by private U.S. parties injured by trade.

For this purpose, the statutory improvements should accomplish three major objectives: To assure that the ITC evaluates more quickly and accurately the impact of imports on an industry and its workers through more specific criteria; to fashion a specific remedy to alleviate temporarily the adverse effect of such imports; and three, to assure that the President not overturn the determinations of the International Trade Commission except with the explicit agreement of Congress.

For unfair trade practices, many of the same problems exist—relief is too little, too late or not at all. For those with access to the financial resources and expertise to seek relief, even the time-consuming procedures do not accomplish the intended result, and most of the injured do not even get a chance to seek relief. These unfair trade practice procedures also need an overhaul.

As the attached Executive Council statement indicates, the AFL–CIO does not believe that these changes alone will be sufficient. In addition to that legislation to help all industries hard hit by imports, the AFL–CIO supports legislation currently being considered to deal with the problems of specific industries:

The Fair Practices and Automotive Products Act, which would assure that the United States has an automotive products industry, including parts and components thereof.

The Competitive Shipping and Shipbuildng Act, which requires 5 percent of all waterborne cargoes to be carried in U.S.-flagships, starting in 1983, increasing 1 percent a year until 20 percent of all U.S. bulk tonnage is shipped on U.S.-flag, U.S.-built vessels in 1998.

The fair market share for apparel imports—a sense of the Congress resolution to state the need for action on the massive influx of job-destroying imports of garments, an industry now inundated by imports from other lands.

We would urge the subcommittee to consider favorably all these proposals.

The other issues raised in the announcement of these hearings are also important. The AFL-CIO appreciates the subcommittee's concern about trade with nonmarket economies. The AFL-CIO's view on this issue is set forth in detail in the attached statement, appendix II, delivered January 29 of last year on the Senate side that sets forth our concerns.

We believe that unfortunately, S. 958 does not provide an adequate remedy for injurious imports from Communist and other nonmarket systems. The AFL-CIO opposes the approach of trying to construct a value based upon the costs to produce the item in the lowest cost free market economy. Instead, we believe that the average U.S. price would be a fairer and more accurate measure.

In addition, the market disruption provisions of section 406 of the Trade Act should be effectively enforced. Anything else would encourage imports from nonmarket economies to the detriment of U.S. production.

In addition, the AFL-CIO believes that the Nation needs revitalization policies for basic industries. Many of these are chronically affected by import competition. We believe that import relief is essential for these injured industries. The AFL-CIO supports a policy that would emphasize the revitalization of the U.S. domestic economy.

Mechanisms, however, only for adjustment to imports could be used to neglect the basic issue of where this country will stand in economic terms in the future. Therefore, we would start with a revitalization policy and link adjustment policies into such a program. The reverse would mean passive adjustment to other nations' strong industrial policies, rather than a positive program for the United States.

Another important element is clarifying and strengthening section 301 authority and procedures to identify and eliminate foreign unjustifiable or unreasonable trade policies or acts.

The response to foreign unfair trade practices under section 301 has proven futile in most cases. The Trade Act of 1979 supposedly authorizes the President to act when another nation's act, policy, or practice is inconsistent with trade agreements, or unjustifiably burdens or restricts U.S. commerce.

In short, when the other nations have unfair practices that affect U.S. exports, section 301 is supposed to be a meaningful remedy. But the detailed, lengthy procedural requirements, the refusal of the U.S. Government to act even when the requirements are met, and the failure of the General Agreement on Tariffs and Trade—GATT—process to recognize U.S. rights generally makes section 301 a mockery of U.S. rights.

The administration, which has repeatedly insisted that 301 and the use of GATT procedures was the only way to achieve effective international rights for U.S. exporters, is beginning to recognize how useless this avenue has become.

For example, U.S. Trade Representative William Brock stated on March 2 that he was seriously troubled by what he called the unwillingness and inability of a GATT dispute panel to deal forcefully with U.S. complaints against European practices in wheat flour sales. The United States had complained about the European Community's export subsidies, in violation of its international obligations under the GATT.

Although the panel found that the European Community had violated its international agreement and had subsidized exports of wheat flour, and although the panel's factual conclusions clearly supported the U.S. position that the European Community has taken more than a fair share of world wheat flour trade, the panel did not find that the interest of the United States had been unduly affected, and merely asked for more consideration of the problem.

In short, even if the trade is clearly unfair, in violation of the GATT, and U.S. trade goes down, the GATT will not support a U.S. case at the present time.

Ambassador Brock stated: "This failure to make a decision casts great doubt on the effectiveness of the GATT's dispute settlement process, and undermines the limited discipline that now exists for agricultural trade."

This, Mr. Chairman, leaves us with the view that it is time for the United States to start to act effectively to pursue its right in the international trade area and to stop the proliferation of legalisms that are deterring effective answers to real problems.

We believe that priority should be given to revamping of the escape clause to allow for quick relief from trade injury. Unfair trade provisions, as well as other avenues for relief from injury, should also be reviewed.

The AFL-CIO, in short, believes that it is time to change U.S. trade laws to provide the relief from trade injury that has long been promised.

Thank you, Mr. Chairman.

[The prepared statement with attachments follows:]

STATEMENT OF DR. RUDOLPH OSWALD, DIRECTOR, DEPARTMENT OF ECONOMIC RESEARCH, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO welcomes the opportunity to discuss the urgent need for effective government action to improve the nation's trade remedy laws. The devastation now suffered by millions of Americans from floods of imports, from the export of technology and jobs, and from the trade impact of an overvalued dollar has compounded the serious economic problems of the U.S. economy. It is clear, therefore, that the United States does not have effective trade remedies. It is time for a change.

In February, the AFL-CIO Executive Council stated:

> "The United States faces unprecedented international trade and investment crises in 1983. "Beggar-thy-neighbor" policies have become the order of the day as other nations restrict U.S. products while pushing their own exports into the United States. The U.S. deficit in trade rose to a record $47.8 billion in 1982 and may double in 1983 . . .
>
> "No one disputes the vital importance of trade, but it is time also to recognize its frequent adverse impacts upon workers and industries and to take steps to balance the equities in the interests of all.
>
> "Labels of 'free trade' and 'protectionism' no longer serve any useful purpose. Tariff and nontariff restrictions are all but universal among America's trading partners, while American producers and marketers remain defenseless."

The AFL-CIO Executive Council statement (Appendix I), which is attached, recommended a series of policy and legislative changes. The statement refers to many of the issues before this Subcommittee as well as issues which are being discussed elsewhere in the Congress.

There is no one single answer to the "trade" problem. But rather a number of actions must be taken to offset and alleviate the harmful effects of "trade" on U.S. industries and U.S. workers, and to enhance the position of U.S. industry in a competitive world.

We appreciate the Subcommittee's interest "in determining how the expense and time involved in processing cases under current procedures might be reduced in order to ensure U.S. industry and labor, including small business, access to trade remedies." Money and time are key issues, but the problem is greater than that. Clear criteria and effective remedies are lacking.

Obviously, both the so-called "fair" and "unfair" trade remedy statutes need improvements. "Fair" trade laws to alleviate trade-induced injury and "unfair" trade actions, such as anti-dumping and countervailing duties should have better procedures and more effective remedies

The help that has been promised to injured industries for 20 years has not become a reality. The safety valve promised to those who are affected by tariff-cutting and import surges, the so-called "escape clause," now Section 201 of the Trade Act of 1974, has never been effective. This mechanism promised to help industries seriously injured by imports. While 201 actions require expensive and extensive documentation, they also involve vague criteria for the International Trade Commission (ITC) to use in making determinations that findings of injury seldom result. In addition, even if the ITC finds injury on the facts and recommends that Section 201 be invoked as intended by law, the President frequently decides not to implement the action.

Since 1975, when the Trade Act of 1974 became law, these many discouragements have caused only 47 cases to be filed, because of the laundry list of criteria which allows the ITC to pick and choose its reasons for non-action. The ITC recommended relief in 27 cases, and only 11 have resulted in any Presidential action to give relief. The relief has never been enough to allow the injured industry to recover from the import assault. Cases are not even filed because U.S. industries and U.S. workers see no results.

In the modern world, injury can be so swift and so sudden that the damage can be irreparable while cases are being processed. Imports can double in less than a year. During this recession, the drop in U.S. sales has impinged in many industries solely on U.S. producers, while imports absorbed none of the sales declines. But the escape clause has no provisions to deal with such problems.

Therefore, the AFL-CIO believes that Section 201 of the Trade Act of 1974 should be overhauled to make the escape clause: (1) Fair and predictable in its application; (2) reasonably accessible to all parties suffering import injury; (3) effective in strengthening the import competitiveness of American industries; and (4) timely to provide swift relief.

The escape clause provisions of the Trade Act should be revised to allow quick relief from trade injury. When a U.S. producer loses sales to foreign producers and reduces his production and workforce accordingly, he knows only that trade elements have injured his business operation and his workers note the injury in the resulting layoffs. At this point, the injured parties don't know if the injury was caused by so-called "unfair" trade practices, by "fair" trade practices, by the rising value of the dollar, by a foreign currency devaluation, or one or a combination of these causes. All they know is that the injury is trade related. Such injured parties should be able to receive temporary relief from the injury, and should receive help from the U.S. government to make the appropriate case under the various provisions of the Trade Act that deal with specific relief measures for certain "unfair" and "injurious" trade practices. Many aspects of foreign governmental subsidy programs and dumping activities are more readily ascertainable by U.S. governmental agencies than by private U.S. parties injured by trade.

For this purpose, the statutory improvements should accomplish three major objectives: (1) Assure that the ITC evaluates more quickly and accurately the impact of imports on an industry and its workers through more specific criteria; (2) to fashion a specific remedy to alleviate temporarily the adverse effect of such imports; and (3) to assure that the President not overturn the determinations of the International Trade Commission except with the explicit agreement of Congress.

For "unfair trade practices," many of the same problems exist: Relief is too little, too late, or not at all. For those with access to the financial resources and expertise to seek relief, even the time-consuming procedures do not accomplish the intended result. And most of the injured do not even get a chance to seek relief. These unfair trade practices procedures also need an overhaul.

As the attached Excecutive Council statement indicates, the AFL-CIO does not believe that these changes alone will be sufficient.

In addition to that legislation to help all industries hard-hit by imports, the AFL-CIO supports legislation currently being considered to deal with the problems of specific industries:

> * The Fair Practices in Automotive Products Act, which would assure that the United States has an automotive products industry, including parts and components of cars. The bill, which passed the House of Representatives last year but did not come before the Senate, would provide that companies which sell large numbers of cars in the United States produce a fair share of the parts and components in the United States in order to provide jobs for American workers.
>
> * The Competitive Shipping and Shipbuilding Act, which requries 5 percent of all waterborne cargoes to be carried in U.S. flagships, starting in 1983, increasing 1 percent a year until 20 percent of all U.S. bulk tonnage is shipped on U.S.-flag, U.S.-built vessels in 1998.
>
> * Fair Market Share for Apparel Imports -- A sense-of-the-Congress resolution to state the need for action on the massive influx of job-destroying imports of garments, an industry now inundated by imports from other lands.

We would urge the Subcommittee to consider favorably all of these proposals.

The other issues raised in the announcement of these hearings are also important. The AFL-CIO appreciates the Subcommittee's concern about trade with nonmarket economies. The AFL-CIO's view on this issue is set forth in detail in the attached statement (Appendix II) of January 29, 1982. S.958 represents a useful vehicle to reopen debate and consideration of these problems. Unfortunately, S.958 does not provide an adequate remedy for injurious imports from communist and other nonmarket systems. The AFL-CIO opposes the approach of trying to construct a value based upon the costs to produce the item in the lowest cost free market economy. Instead, we believe that the average U.S. price would be a fairer and more accurate measure. In addition, the market disruption provisions of Section 406 of the Trade Act should be effectively enforced. Anything else would encourage imports from nonmarket economies -- to the detriment of U.S. production.

In addition, the AFL-CIO believes that the nation needs revitalization policies for basic industries. Many of these are "chronically affected by import competition." We believe that import relief is essential for these injured industries. The AFL-CIO supports a policy that would emphasize the revitalization of the domestic economy. Mechanisms only for adjustment to imports could be used to neglect the basic issue of where this country will stand in economic terms in the future. Therefore, we would start with a revitalization policy and link adjustment policies into such a program. The reverse would mean passive adjustment to other nations' strong industrial policies rather than a positive program for the United States.

Another important need is clarifying and strengthening 301 authority and procedures to identify and eliminate foreign unjustifiable or unreasonable trade policies or acts.

The response to foreign unfair trade practices under Section 301 has proven futile in most cases. The Trade Act of 1979 supposedly authorizes the President to act when another nation's "act, policy or practice . . . is inconsistent with trade agreements" or unjustifiably "burdens or restricts U.S. commerce." In short, when the other nations have unfair practices that affect U.S. exports, 301 is supposed to be a meaningful remedy.

But the detailed, lengthy procedural requirements, the refusal of the U.S. government to act even when the requirements are met, and the failure of the General Agreement on Tariffs and Trade (GATT) process to recognize U.S. rights generally makes 301 a mockery of U.S. rights.

The Administration, which has repeatedly insisted that 301 and the use of GATT procedures was the only way to achieve effective international rights for U.S. exporters, is beginning to recognize how useless this avenue has become.

For example, U.S. Trade Representative William Brock stated on March 2, that he was seriously troubled by what he called the "unwillingness and inability" of a GATT dispute settlement panel to deal forcefully with U.S. complaints against European practices in wheat flour sales. The U.S. had complained about European Communities' export subisidies in violation of its international obligations under the GATT.

Although the panel found that the European Communities had violated its international agreement and had subisidized exports of wheat flour, and although the panel's factual conclusions clearly supported the U.S. position that the EC has taken more than a fair share of world wheat flour trade, the panel did not find that the interest of the United States had been unduly affected and merely asked for more consideration of the problem.

In short, even if the trade is clearly unfair, in violation of the GATT, and U.S. trade goes down, the GATT will not support a U.S. case at the present time.

Ambassador Brock stated: "This failure to make a decision casts great doubt on the effectiveness of the GATT's dispute settlement process, and undermines the limited discipline that now exists for agricultural trade."

This, Mr. Chairman, leaves us with the view that it it time for the U.S. to start to act effectively to pursue its rights in the international trade area and to stop the proliferation of legalisms that are deterring effective answers to real problems.

We believe that priority should be given to a revamping of the "escape clause" to allow for quick relief from trade injury. Unfair trade provisions as well as the other avenues for relief from injury should also be reviewed.

The AFL-CIO, in short, believes that it is time to change U.S. trade laws to provide the relief from trade injury that has long been promised.

Attachments:
Appendix I and II

APPENDIX I

Statement by the AFL-CIO Executive Council

on

International Trade and Investment

February 21, 1983
Bal Harbour, Fla.

The United States faces unprecedented international trade and investment crises in 1983. "Beggar-thy-neighbor" policies have become the order of the day as other nations restrict U.S. products while pushing their own exports into the United States. The U.S. deficit in trade rose to a record $47.8 billion in 1982 and may double in 1983. The Reagan Administration ignores these facts and continues to make speeches about free trade.

No one disputes the vital importance of trade, but it is time also to recognize its frequent adverse impacts upon workers and industries and to take steps to balance the equities in the interests of all.

Labels of "free trade" and "protectionism" no longer serve any useful purpose. Tariff and nontariff restrictions are all but universal among America's trading partners, while American producers and marketers remain defenseless.

Too many Americans are losing jobs and too many companies are losing sales because the trade and investment policies of the United States ignore the realities of our time. This nation needs a policy to assure a healthy and diversified economy that offers work opportunities to all job seekers.

Some newly industrialized and developing countries curb imports into their markets while pushing more products into the U.S. to pay their debts. The International Monetary Fund, supported by the U.S. government, encourages these curbs by conditioning loans on these practices without concern for the adverse impact on the economic base of the United States and the entire free world.

Non-market and Communist countries, which generally have weaker economic systems and strong trade barriers, import only those products that they desperately need and frequently barter their exports in ways that make a mockery of free trade.

Global firms and banks, both U.S.-and foreign based, are moving more and more technology and production facilities out of the United States into nations where laws and policies curb imports and subsidize exports. These firms and banks join with foreign nations to pursue private profit advantage regardless of the impact on U.S. jobs and production; all too often they collaborate with nations that are waging economic warfare against the United States.

Massive increases in the dollar's exchange value have cheapened and increased imports while inflating the cost and reducing demand for U.S. exports. Between January 1981 and January 1983, the dollar rose 29 percent against America's major trading partners. Yet, the Federal Reserve Board continues unrealistic tight-money policies that have helped to drive up the value of the dollar.

The AFL-CIO has consistently opposed policies and proposals that make matters worse, such as trade and tax aspects of the Caribbean Basin Initiative and the export of Alaskan oil and critical technologies. There should be assurance that a portion of U.S. raw material exports are processed in this country, so that export of products such as grains, logs, etc., would be made conditional upon specific domestic processing.

The AFL-CIO has urged funding for the Export-Import Bank on condition that such funds be used to support U.S.-produced goods and to offset import-financing subsidies. The AFL-CIO also supports improved Buy-American laws and opposes the weakening of these laws through regulative manipulation. We urge restoration of a strong Trade Adjustment Assistance program.

Realistic reciprocity with other nations is long overdue and should be actively pursued, starting with enforcement of existing law. Provisions offsetting unfair trade practices need to be tightened and effectively enforced.

The AFL-CIO will continue to fight for these policies and the full array of solutions adopted by this Council, as detailed in the attached appendix. Many individual U.S. industries have been hard hit by trade and these AFL-CIO proposals need to be enacted to alleviate those problems.

In addition, we support a new proposal for overall import relief:

* Legislation to require the International Trade Commission to evaluate more accurately and quickly the impact of imports upon an industry and its workers and to fashion a specific remedy to alleviate temporarily the adverse effect of such imports. Determinations of the International Trade Commission should not be overturned by the President except with the explicit agreement of Congress.

In addition to that legislation to help all industries hard-hit by imports, the AFL-CIO supports legislation currently being considered to deal with the problems of specific industries:

* The Fair Practices in Automotive Products Act, which would assure that the United States has an automotive products industry, including parts and components of cars. The bill, which passed the House of Representatives last year but did not come before the Senate, would provide that companies which sell large numbers of cars in the United States produce a fair share of the parts and components in the United States in order to provide jobs for American workers.

* The Competitive Shipping and Shipbuilding Act, which requires 5 percent of all waterborne cargoes to be carried in U.S. flagships, starting in 1983, increasing 1 percent a year until 20 percent of all U.S. bulk tonnage is shipped on U.S.-flag, U.S.-built vessels in 1998.

* Fair Market Share for Apparel Imports -- A sense-of-the-Congress resolution to state the need for action on the massive influx of job-destroying imports of garments, an industry now inundated by imports from other lands.

Immediate actions are necessary to establish a fair trade policy -- a policy that is fair to all -- to assure that there will be a strong America that can continue to cooperate with its trading partners.

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ATTACHMENT: Trade and Investment Issues, 1983

BEST COPY AVAILABLE

Prior AFL-CIO Policies on Trade and Investment Issues of 1983

The U.S. needs a "fair" trade policy that enables this country to have a diversified industrial base with skills and services of an advanced economy, plus a policy that will create full employment and raise the standards of living at home as well as in other countries of the world -- all of which will help the U.S. meet the needs of a changing world in the 1980's. (Convention)

In order to achieve fair trade, international trade and investment policies must give greater emphasis to U.S. interests through its own national actions and through cooperation with other nations.

The United States must remain a major maritime, agricultural and manufacturing nation. The U.S. needs a foreign trade policy that will insure -- not undercut -- that goal.

The new factors in international trade require attention, while old problems also need solutions.

ISSUE	AFL-CIO POLICY
1. Domestic content requires that autos sold in the U.S. contain a rising percentage of U.S. value of auto parts: If more than 100,000 cars are sold, autos must have 10 percent in U.S. value. This goes up to 90 percent at over 900,000. The bill passed the House and did not come up in the Senate.	1. Domestic content laws should be enacted to assure continued production of such products as autos. A U.S. production requirement is needed to preserve employment and skills and shore up the nation's sagging industrial base. Local content requirements in autos should be tied to sales volume and should be phased in beginning with the 1983 model year. (Convention, 1981, Executive Council Statements supported H.R. 5133 in 1982.)
2. Competitive Shipping and Shipbuilding Act - Maritime Trades supported this bill in 1982 (Boggs and 75 members). It required 5 percent of all waterborne cargoes in U.S. flag ships, starting in 1983, increasing one percent a year until 20 percent of all U.S. bulk tonnage is shipped on U.S.-flag, U.S.-built vessels in 1998. It will be an issue this year.	2. There should be greater use of the U.S. merchant marine fleet by the U.S. Navy for auxiliary functions. Reviving the U.S. merchant marine also requires the negotiation of bilateral shipping agreements, particularly with respect to grain and coal shipments. The U.S. government also should ratify the UN Committee on Trade and Development code for liner conferences, which would help restore more equity of shipment in U.S. bottoms for cargo generated by U.S. trade. There should be a revision in the tax incentives and budgeting regulatory practices to encourage the building of new vessels in the U.S. rather than in foreign shipyards. (Convention, 1981.)

ISSUE	AFL-CIO POLICY
3. Trade Adjustment Assistance now provides for 52 weeks of payments at state unemployment standards and levels for workers who can prove injury from rising imports. There is also a program for firms. The law expires September 30, 1983. Problem is to restore old program, start a new one, or drop it. Training program will be an issue.	3. "The slashing of Trade Adjustment Assistance that has resulted from the budget cuts must be reversed. Those workers who lose their jobs because of imports should receive the 70 percent of lost pay for up to one year, and the training and relocation aid that they were promised in the Trade Acts of 1974 and 1979." (Convention, 1981.) 3. Extension of Trade Adjustment Assistance to provide adequate compensation to those unemployed because of trade, and improve training, job search, and relocation aid to those displaced workers who need such help.
4. Export-Import Bank charter expires in September 1983. Issues will be giving Bank more resources, more independence. Last year Bank got $4.4 billion for direct credits and $9.2 billion ($36.8 billion) in guarantees. More than Administration requested.	4. Foreign grant, insurance and loan programs should be supervised in terms of U.S. interests at home as well as abroad. This means the Ex-Im Bank loans, guarantees and insurance activities should be carefully limited both in amount and in the authority to expand the action. (Convention, 1981.) 4. Commitment that foreign grant, insurance and loan programs, such as the Export-Import Bank, are carefully managed to safeguard U.S. interests at home and abroad. Despite defects of the Ex-Im Bank, funds must not be slashed until other countries cut or eliminate their subsidy programs. Ex-Im Bank funds and guarantees must not be extended to any Communist countries. (Executive Council, February 1982.) 4. Ex-Im Bank insurance and loan guarantees for South Africa, as well as other U.S. government operations which promote the flow of capital or credit to South Africa should end. (Executive Council, 1977.)

ISSUE

5. Export Administration Act will expire on September 30, 1983. Administration has identified 27 issues in this bill which basically provides authority for export control for foreign policy, national security and short-supply reasons. Bill also affects Alaskan oil issue, Arab boycott, and Administration request expected in April.

AFL-CIO POLICY

5. The Export Administration Act of 1979 prohibits the export of Alaska North Slope oil except for a national emergency and recognizes the essential role of the U.S.-flag fleet in deistributing the oil to all regions of the country. The development of domestic oil for American use and the maintenance of a U.S. fleet capable of transporting it will help insure that the nation has enough energy to meet its needs. (Convention, 1979.)

5. "Restrict the export of logs which is causing shortage-induced domestic price increases for lumber." (Housing Resolution Convention, 1981.)

5. AFL-CIO has traditionally supported foreign policy controls, security controls and controls on items in short supply (hides, logs, etc.).

5. We are also told that an embargo on the sale of grain, technology, and factories to the Soviets would hurt American farmers and businessmen more than the Soviets, who could find other suppliers. This argument assumes that we are powerless to influence the behavior of our allies, and becomes a self-fulfilling prophecy. (Convention, 1981.)

5. Export promotion should be a government priority, carefully targeted to accomplish specific goals. It should not include capital, technology and price-sensitive commodities. Export promotion must not take priority over domestic budget needs, nor be used as an excuse for undermining U.S. anti-trust laws or banking laws. The U.S. should limit the transfer of new technology in order to assure both its national defense and its technological advances. (Convention, 1981.)

5. Grains and grain agreements should assure export of food products made from grain as well as the grain itself. The U.S. government should be the negotiator, through an established "Wheat Board" similar to the Canadian model.

5. Assurance that a portion of U.S. raw material exports be processed in this country, so that export of products such as grain, logs, etc., is conditioned upon specific domestic processing.

ISSUES	AFL-CIO POLICY
6. Caribbean Basin Initiative gives President 12-year authority to grant zero tariffs on imports (except textiles and oil products) from 28 countries as long as 35 percent content comes from Caribbean (15 percent can be from U.S.).	6. New proposals for trade arrangements with America's nearest neighbors, or with any other individual foreign country, should be based on a realistic assessment of the past and future impact of trade and investment not only in the host country but on specific parts of the U.S. economy and on U.S. workers. Differences as well as the similarities of the trade and investment regulations of the respective countries need to be recognized. The United States should continue to try to solve specific bilateral problems, but should not enter into so-called "free trade" areas that could cause massive distortions inimport-export balances. We recognize the need to help friends achieve industrial development particularly the poorest of the developing countries. This requires that the emphasis should be on internal development, not on exports to the U.S. market at the expense of U.S. workers. The Caribbean Basin is an excellent example of an area where aid must be realistic to promote living standards and not at the expense of U.S. jobs or living standards. (Convention, 1981.) 6. Aid in the development of Caribbean nations needs to be enhanced, but proposals for "one-way" free trade and additional investment incentives to U.S. firms for investing abroad should be rejected. (Convention, 1981.)
7. Generalized System of Preferences (GSP) Title VI of Trade Act of 1974 allows zero tariffs on imports from 140 "developing" nations and territories under certain conditions.	7. GSP should be repealed. At a bare minimum, Congress and the Administration should remove import-sensitive products from the list, guarantee that only the neediest countries receive the benefits, and exclude Communist economies. (Convention, 1981.)
8. Reciprocity - There is no strong reciprocity proposal before Congress. President has power to act reciprocally under Section 124 of the Trade Act of 1974. Meaningful reciprocity is highly unlikely to be achievable through a new law. Last year's proposal had little reciprocity and lots of new negotiating authority.	8. "Vigorous enforcement of reciprocity provisions of the Trade Act must be undertaken." (February 1982.)

ISSUES	AFL-CIO POLICY
9. Tariff cutting, Section 124 of the Trade Act allowed the President to negotiate come tariff cuts as a "housekeeping" measure at the end of tariff negotiations in 1979. Administration wants to keep extending this authority.	**9.** Ending of the President's continued authority to neotiate further tariff reduction. (Executive Council, February 1982.)
10. Foreign Corrupt Practices Act - Amendments to weaken enforcement of U.S. prohibitions against bribery of foreign officials. This was a big issue last year and the amendments will be re-introduced.	**10.** AFL-CIO Executive Council has called for "strictly enforced U.S. laws that prohibit bribery of foreign officials." Codes of conduct for the operations of multinational corporations are necessary, but are no substitute for strictly enforced U.S. laws that prohibit bribery of foreign officials and participation in economic blackmail schemes designed to negate American foreign policy. Similarly, international agreements are needed to improve labor standards in those countries that seek to attract industry through the exploitation of workers. (Executive Council, February 1977.)
11. Trade Reorganization - Senator Roth has called for a Department of International Trade and Industry. Senator Moynihan has introduced a bill for coordination. President recommended better coordination in State of Union message.	**11.** The current proposal for a Department of International Trade and Investment is premature and raises serious questions about how it would fit into government structure. The reasons for the proposal are understandable; however, the conflicting, confusing and proliferating agencies and offices that determine trade policies and practices demand better coordination. The recent Executive Branch reorganization of trade functions should be continually reexamined to assure much greater coordination and strengthening of domestic representation in trade decisions. "Independent" government organizations, like the Overseas Private Investment Corporation (OPIC), should be terminated as soon as possible. (Executive Council, February 1981.)

ISSUES	AFL-CIO POLICY
12. Buy American - Highway law and Surface Transportation Act, Defense Appropriations, etc. have "Buy American" provisions. These will all be under attack (both military and non-military) again this year.	12. The multilateral trade codes adopted in 1979 require constant monitoring and the enforcement of U.S. rights. Only the negotiated provisions should be enforced, particulary in the area of government procurement, where many U.S. agencies, state and local governments were specifically exempted from the requirements of the codes. National security clauses in the code should be used to assure U.S. production and jobs in key industries. (Convention, 1981.)
13. Escape Clause, Article XIX of the GATT and Section 201 of the Trade Act of 1974 provides for "escape" from GATT obligations for free trade if an industry can prove serious injury. But there are no clear criteria for finding injury, no requirements for action to remedy injury. A proposal for clear criteria to set a presumption of injury, to limit discretion of ITC and to limit discretion of the President, could accomplish two goals quickly: Show size of problem and get action.	13. To assure a viable industrial base and national security, immediate import relief should be accorded some key industries faced with serious erosion, such as the auto and steel industries. Existing laws should be improved to assure speedy relief to industries when the threat of injury from imports is evident. These laws also should be amended to assure that the producers of major and essential components can receive appropriate relief from injury caused by imports. (Convention, 1981.)
14. Services - Legislative authority is proposed.	14. Trade issues in "services" should be approached on a case-by-case basis and in bilateral negotiations. A clear and appropriate definition of services and adequate statistics need to be developed before multilateral trade negotiations are undertaken. The U.S. government should help promote the rights of American services industries abroad where unfair barriers stand in the way of increased U.S. employment. Service industries in the U.S. should be analyzed in relation to employment effects before there are any overall negotiations. U.S. service workers and firms should have protection against unfair trade practices. (Convention, 1981.)

SUMMARY OF STATEMENT OF STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

1. The AFL-CIO appreciates the opportunity to discuss a major problem left unresolved during the Multilateral Trade Negotiations (MTN) of 1979 -- the issue of how to correct dumping and market disruption caused by such practices as countertrade and artificial pricing of articles produced by communist countries or other nonmarket economy countries.

2. S.958 represents a useful vehicle to reopen debate and consideration of these problems. Unfortunately, S.958 does not provide an adequate remedy for injurious imports from communist and other nonmarket systems.

3. Nonmarket trade has already had serious effects on the U.S. economy and on specific industries. Imports of light bulbs, golf carts, shoes, steel items, glass, and textiles have often come in at prices based on political considerations that undercut U.S. production. But neither the size nor the impact of this trade is monitored by the government in accurate detail.

4. Market disruption caused by U.S. trade with nonmarket economies is far more complex than a simple examination of artificial pricing practices by those countries would reveal -- lopsided countertrade deals are equally disruptive.

5. Artificial pricing is indigenous to NME's because their prices are government controlled, and their economies are government planned -- heavily subsidized -- and, therefore, not reflective of an interplay between supply and demand. Production costs are not susceptible to real measurement. Their sales are not based on traditional market factors such as costs and profits. Their aim is to push exports as a source of foreign exchange or barter to aid in internal industrial development or other governmental policies. For these reasons, a "free trade" country ends up playing Russian Roulette when trying to make the price comparisons necessary to establish dumping.

6. The present law definition of NME's is clearly not adequate. We recommend that additional language be added to present law so as to include coverage of sales by government controlled and planned economies along with communist countries now covered by definition. In this regard, we do not think it is necessary to scrap the current definition of an NME, as proposed by S.958, and start from scratch but rather we prefer to build on the current definition to reflect the fact that nonmarket economies are not only communist countries but also include government planned, heavily subsidized economies. Current law is totally inadequate for taking care of these problems.

7. S.958 would permit an interested party -- as defined in current law -- to file a complaint alleging artificial pricing against an NME. If the respondent country provides "verifiable information" sufficient to permit a normal countervailing duty or anti-dumping investigation, then the investigation will be conducted without regard to whether an industry is injured or to whether the establishment of an industry is materially retarded.

Assuming an artificial pricing investigation, it will be defined to exist "whenever an article like an article produced by such domestic industry, is imported directly or indirectly from an NME country or countries at a price below the lowest free market price of like articles." (Emphasis supplied.)

The AFL-CIO opposes this approach because it calls for non-objective bureaucratic determinations. For example, how can there be an objective determination of "verifiable information" obtained from a state-controlled economy under consideration in an adversary proceeding? It would be preferable to retain and effectively enforce market disruption -- the concept embodied in Section 406 -- as determinative. At the very least, the average U.S. price would be a fairer and more accurate measure. Anything else would encourage imports from nonmarket economies -- to the detriment of U.S. production.

8. The AFL-CIO, therefore, calls for complete and accurate reporting of all nonmarket trade. The need for an effective and basic test with prompt action is long overdue.

STATEMENT OF STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO appreciates the opportunity to discuss a major problem left unresolved during the Multilateral Trade Negotiations (MTN) of 1979 -- the issue of how to correct dumping and market disruption caused by such practices as countertrade and artificial pricing of articles produced by communist countries or other nonmarket economy countries. In this regard, S.958, a bill introduced last April by Senator Heinz to amend the 1974 Trade Act to provide a special remedy for the artificial pricing of articles produced by nonmarket economy countries, represents a useful vehicle to reopen debate and consideration of these problems. Unfortunately, S.958 does not provide an adequate remedy for injurious imports from communist and other nonmarket systems.

Nonmarket trade has already had serious effects on the U.S. economy and on specific industries. Imports of light bulbs, golf carts, shoes, steel items, glass, and textiles have often come in at prices based on political considerations that undercut U.S. production. In addition, sudden surges -- from twenty six thousand dozen (312 thousand) to over a hundred thousand dozen (1.2 million) sweaters from China in 1980, for example -- can cause serious problems in the U.S. of lost jobs and production.

But neither the size nor the impact of this trade is monitored by the government in accurate detail. (See attached.)

The 1974 Trade Act defines nonmarket economies (NME's) as those that are dominated or controlled by communism. It requires the U.S. International Trade Commission to monitor trade with certain NME's. At present, those listed for monitoring include: Albania, Bulgaria, Cuba, Czechoslovakia, East Germany, certain parts of Indochina, such as Vietnam, North Korea, the Kurile Islands, Latvia, Lithuania, Mongolia, Southern Sakhalin, Tanna Tuva, and the U.S.S.R. In addition, four communist countries receiving most-favored-nation (MFN) tariff treatment are also monitored: Hungary, China, Poland, and Romania. For the first time, the U.S. has dropped Yugoslavia from that list.

As commonly understood, countertrade is a method long used by nonmarket countries to avoid paying cash for imported products. Years ago, it was most frequently used by Eastern European countries, but such deals are now being forced upon a wide range of countries, including the United States, despite the fact that historically U.S. firms preferred straight cash deals. Recently, the Wall Street Journal reported on the growing practice of U.S. countertrade deals. Here is just one reported example: General Electric agrees to sell $142 million worth of electric turbine generators to Romania (an NME) for use in a nuclear power plant in that country. In return, GE agreed to buy ore market overseas Romanian products valued at the full cost of the U.S. generators. As if that were not enough, GE also agreed to export technology that could result in Romania successfully competing with GE in overseas markets. As a final sweetener, GE assisted Romania in obtaining a $120 million loan from the Export-Import Bank, and is pressing private banks to lend Romania an additional $200 million. The whole point of this illustration is that market disruption caused by U.S. trade with nonmarket economies is far more complex than a simple examination of artificial pricing practices by those countries would reveal. Such lopsided countertrade deals as the one GE has recently made are equally disruptive. These deals are a form of barter that do not fit into the modest protection afforded by existing trade laws and policies which are geared to market economies and a supposed "free trade" philosophy. This is because the foreign countries and companies pressuring for these agreements do not pretend to practice either "free trade" or to follow the underlying principles of a market economy. In this regard, we note that Romania has recently adopted foreign trade legislation that firmly established the principle of "parallel sales," or full countertrade, as part of each contract with a Western company.

The seriousness of these problems was pointed out to this Subcommittee in testimony by AFL-CIO President Lane Kirkland on July 13, 1981:

> "The impact on U.S. trade of barter arrangements can be large. Pricing policies of the firms using barter and/or of a communist country are not based on product cost as in a market system. Countertrade is a serious danger because of the continued transfer of technology and the loss of production and jobs. Yet countertrade may represent 20 percent of world trade in the 1980s.
>
> "Critical U.S. military technologies have been handed over to nations committed to support the Soviet Union as part of a massive pattern of transferring U.S. technology around the world.
>
> "The AFL-CIO has long urged adequate monitoring of nonmarket trade and bilateral regulation."

Artificial pricing is indigenous to NME's because their prices are government controlled, and their economies are government planned -- heavily subsidized -- and therefore not reflective of an interplay between supply and demand. Production costs are not susceptible to real measurement. Their sales are not based on traditional market factors such as costs and profits. Their aim is to push exports as a source of foreign exchange or barter to aid in internal industrial development or other governmental policies. For these reasons, a "free trade" country ends up playing Russian Roulette when trying to make the price comparisons necessary to establish dumping. The most famous example of this problem, of course, is the Polish golf cart case, in which the Poles, who have no golf courses in their country, were selling golf carts in the United States at exceptionally low prices and disrupting the American market for golf carts. Since there was no internal market for golf carts in Poland, it was impossible to apply the normal test for dumping -- selling below prices charged in the home country -- or below cost of production.

Given the history of trade disruption caused by nonmarket economy countries, the first issue that must be addressed is whether the present law definition of NME's is adequate. We suggest that it is clearly not adequate and recommend that additional language be added to present law so as to include coverage of sales by government controlled and planned economies along with communist countries now covered by definition. In this regard, we do not think it is necessary to scrap the current definition of an NME, as proposed by S.958, and start from scratch but rather we prefer to build on the current definition to reflect the fact that nonmarket economies are not only communist countries but also include government planned, heavily subsidized economies.

Current law is totally inadequate for taking care of these problems. Both the General Agreement on Tariffs and Trade (GATT) and U.S. law are geared to "free market" economies. In 1978, Treasury Department regulations sought to cope with these problems through the use of concepts of "comparable economy" or "constructed value" (which could include hypothetical costs). At the time, the AFL-CIO urged that those regulations be withdrawn. In a letter of opposition to the Commissioner of Customs (see attached letter dated February 22, 1978), AFL-CIO Research Director, Rudy Oswald, stated in part:

> "Dumping is not a theoretical problem for American workers. It is a hard, unassailable, job destroying fact. Imports of glass, shoes, golf carts, bicycles, have been dumped at the expense of United States workers. Now more sophisticated equipment, such as aircraft engines, computer parts, etc., are coming in from communist countries and costing United States jobs. Any regulation to reduce the penalties for illegal dumping of these products is against the best interest of the United States and a mockery of United States' law."

S.958 would permit an interested party -- as defined in current law -- to file a complaint alleging artificial pricing against an NME. If the respondent country provides "verifiable information" sufficient to permit a normal countervailing duty or anti-dumping investigation, then the investigation will be conducted without regard to whether an industry is injured or to whether the establishment of an industry is materially retarded. In other words, the current concept of Section 406 of the '74 Trade Act would cease to exist, and instead would be redesigned to deal with unfair trade practices rather than market disruption. The purpose for dangling this carrot in front of an NME is that in the long term it might encourage it to "develop the attributes of market economies." The other side of the coin -- the stick -- is that if "verifiable information" is not supplied sufficient to conduct such an investigation, then an artificial pricing investigation will commence.

Assuming an artificial pricing investigation, it will be defined to exist "whenever an article like an article produced by such domestic industry, is imported directly or indirectly from an NME country or countries at a price below the lowest free market price of like articles." (Emphasis supplied.)

The AFL-CIO oppposes this approach because it calls for non-objective bureaucratic determinations. For example, how can there be an objective determination of "verifiable information" obtained from a state-controlled economy under consideration in an adversary proceeding? It would be preferable to retain and effectively enforce market disruption -- the concept embodied in Section 406 -- as determinative. We make this recommendation because it is the sale by the nonmarket country -- not the country standing alone -- that adversely affects U.S. producers and workers.

Moreover, the proposed definition of "artificial pricing" fails to take into account the fact that the United States is disadvantaged uniquely in East-West relations. European countries have bilateral quotas to prevent market disruption -- while the U.S. has remained open to nonmarket countries. The only realistic "free market" measure for a nonmarket import is the average U.S. price for that product. Anything else would encourage imports from nonmarket economies -- to the detriment of U.S. production.

For example, "artifical pricing" should not be determined on the basis that the Taiwanese sell a like article at a price equal to or slightly below that of a nonmarket economy. We suggest that the preferable course of action is to follow the lead of the European countries by preventing market disruption rather than attempting simply to paper over the problem after it has occurred. At the very least, the average U.S. price would be a fairer and more accurate measure.

We would welcome the opportunity to work closely with the members of this Subcommittee in your efforts to find legislative solutions to these complex problems. Certainly S.958 is serving the purpose of raising general awareness that there is need for prompt action -- we cannot afford to leave unattended market disruptions resulting from unbridled trade with nonmarket countries.

The AFL-CIO, therefore, calls for complete and accurate reporting of all nonmarket trade. The need for an effective and basic test with prompt action is long overdue.

Attachment

February 22, 1978

Mr. Robert E. Chasen
Commissioner of Customs
United States Customs Service
1301 Constitution Avenue
Washington, D.C. 20229

ATTENTION: Regulations and Legal Publications Division

Dear Mr. Chasen:

The AFL-CIO opposes Treasury's proposed changes in the regulations for enforcement of the Antidumping Act against imports of products from Communist countries. These changes, published in the Federal Register on January 9, 1978, would allow Treasury to set lower charges against imports dumped by communist countries in the United States than those now required by law. The AFL-CIO recommends that this unfair proposed change be withdrawn.

Dumping means selling a product in the United States at less than fair value or less than the market price in the exporting country's market. When a United States industry is hurt by dumping of imports, the law directs Treasury to put on a tariff to offset the unfair and illegal dumping price. Dumping is an illegal practice under the United States Antidumping Act of 1921, as amended, and international agreements.

Communist countries have no equivalent of "fair market value" in a market pricing system, because their prices are set by government regulation. To determine dumping values, therefore, the Treasury established a practice of using prices charged for a similar product in a non-communist country where market prices exist. In Section 321 (d) of the Trade Act of 1974, Congress made this practice part of the United States antidumping law. In 1976, Customs amended the regulation, 19 CFR Part 153.7, to conform with that law.

Now Treasury seeks to modify that ruling and allow Treasury officials to construct the appropriate value abroad in one of three ways:

First, actual sales price in a country with "comparable" economic development to the communist country.

AFL-CIO opposes this because no realistic comparisons of economic development levels between market and non-market economies can be objectively established. Furthermore, a product can be dumped in the United States from an underdeveloped country. The level of economic development does not determine whether or not an unfair or illegal price is established.

Second, if no "comparable country" exists which produces the product, Treasury could set up a "constructed value" based on costs of the product in a non-state controlled country. But that value could be "adjusted for differences in economic factors" to meet the "comparable" country standard.

The AFL-CIO opposes this because it would call for non-objective determinations by Treasury. The price in a dumping case is a market price of a product -- not a constructed or theoretical price.

Third, if no "comparable country exists", Treasury can set up hypothetical costs for "constructed value" which then can be adjusted for differences on the basis of "specific objective components" or factors of production. "Such specific components or factors of production, including, but not limited to, hours of labor required, quantities of raw materials employed, and amount of energy consumed, will be obtained from the state controlled economy under consideration." Then the Secretary of the Treasury would be empowered to determine whether or not "verification" of these figures in the "state-controlled economy" meet his "satisfaction", and, if so, these would be "valued in a non-state-controlled economy determined to be comparable in economic development...." (153.7 (b) (2)

The AFL-CIO opposes this because it is non-objective and because it would set up an ever-larger bureaucracy to determine hypothetical information. Again, dumping is sale in a market economy and must relate to real market prices.

Dumping is not a theoretical problem for American workers. It is a hard, unassailable, job destroying fact. Imports of glass, shoes, golf carts, bicycles, have been dumped at the expense of United States workers. Now more sophisticated equipment such as aircraft engines, computer parts, etc., are coming in from communist countries and costing United States jobs. Any regulation to reduce the penalties for illegal dumping of these products is against the best interests of the United States and a mockery of United States' law.

The Treasury Department has not justified any change in the current regulation 153.7 and 153.27 which now conform with United States law. The AFL-CIO urges withdrawal of the proposed changes.

Sincerely,

Rudy Oswald, Director
Department of Research

Chairman **Gibbons**. Thank you, sir. Of course there is much in your statement that I can agree with, Mr. Oswald. I can't agree with all the things that you set out there, but those differences are well known to both of us and I shall not dwell on them.

I think you have made a good analysis of the problem we have with relief. I think it is not only reflected in your organization but it is reflected generally in the people that I deal with. The trade remedy laws just do not hit the target. They are too expensive, too slow, too imprecise in meting out a remedy and there are just too many discretionary things that can interrupt them.

I hope that we can, within this session of Congress, this year, get this thing remedied. That is my aim and objective.

I appreciate it. I will read your additional materials that are attached.

Mr. Frenzel?

Mr. **Frenzel**. No questions, Mr. Chairman.

Chairman **Gibbons**. Thank you very much.

Mr. **Oswald**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Our next group of witnesses are from the Textile/Apparel Import Steering Group, and if they would come forward at this time. Mr. Sol C. Chaikin, Mr. James H. Martin, and Mrs. Dubrow, Evelyn. We're happy to have you here, all three of you.

STATEMENT OF SOL C. CHAIKIN, MEMBER, EXECUTIVE COMMITTEE, TEXTILE/APPAREL IMPORT STEERING GROUP, AND PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS UNION, ACCOMPANIED BY EVELYN DUBROW, VICE PRESIDENT AND WASHINGTON REPRESENTATIVE; AND W. RAY SHOCKLEY, EXECUTIVE VICE-PRESIDENT, AMERICAN TEXTILE MANUFACTURERS INSTITUTE

Mr. **Chaikin**. Mr. Chairman, my colleague, Jim Martin, who was to have accompanied us this afternoon, was called to New York on a most important activity, but this group is pleased to have along with us Ray Shockley, who is the executive vice president of the American Textile Manufacturers Institute and Evelyn Dubrow, who is a vice president of the International Ladies' Garment Workers Union and our Washington representative.

Chairman **Gibbons**. I don't know the rest of the panel, but certainly I know and respect Ms. Dubrow.

Mr. **Chaikin**. Mr. Chairman, my name is Sol C. Chaikin. I am president of the International Ladies' Garment Workers Union. I am appearing today on behalf of the Textile/Apparel Import Steering Group. The 20 trade associations and labor unions in our steering group represent a major part of the fiber, textile and apparel industries in the United States.

We appreciate greatly the opportunity to present our views on U.S. trade law, an area in which the U.S. fiber, textile, and apparel industry is deeply concerned and actively involved. It is important that the subcommittee, in its deliberations, as they may affect the fiber, textile and apparel sector, recognize a few key points regarding this industry.

The U.S. industry is in a somewhat unique situation, largely because of the Multi-Fiber Arrangement which governs international trade in the products of our industry. In addition, import duties on textiles and apparel are, on the average, higher than the average U.S. tariff. We recognize this, and I know, Mr. Chairman, that you recognize it as well. In terms of national policy, however, there are overriding reasons why this is the case.

The fiber, textile and apparel industry is still the largest employer of labor in manufacturing in the United States. One out of every eight jobs in manufacturing are in our industry. There are some 25,000 firms in the industry. Their combined output in 1980 was $114 billion.

For every 100 workers employed in our industry there are about 50 others employed in other industries who depend on our industry for their jobs. These workers are in industries which supply our own people with chemicals, machinery, paper and the like, or who transport materials to our factories and take our finished products to retail for sale to consumers.

Our plants are located in every one of the 50 States. They are in rural and semirural areas where alternative employment opportunities are greatly limited. They are located as well in heavily populated metropolitan urban areas where unemployment rates are well above the national average.

The industry provides jobs for the semiskilled. It is a substantial employer of women and of minorities. It provides entry-level jobs to many who would not otherwise have a job.

The output of this industry is absolutely essential to the national security of our country. In short, the fiber, textile and apparel industry is fundamental to the entire U.S. economy. It contributes mightily to the strength of our economic system and of our industrial base.

Notwithstanding these relatively unique circumstances, however, imports have taken and continue to take a devastating toll on this industry. U.S. imports of apparel have grown by about 8 percent per year during the last decade. The resulting number of job losses is staggering. Some 650,000 job opportunities have been lost over the last decade.

The U.S. textile and apparel industry, which employed 2.4 million workers just 10 years ago, now hardly has within its ranks 1.9 million workers. The average unemployment rate in 1982 in this industry was an appalling 15.4 percent for apparel and 13.5 percent for textiles. And the latest unemployment rate figures for February 1983 remain above the rates recorded a year earlier.

Statistics for 1982 reflect the overall difficulties experienced by the fiber, textile and apparel sector in 1982. Domestic apparel production fell 10 percent in 1982 from 1981 levels. Based on fiber consumption, overall domestic production of textiles declined by 13 percent. Workers in the textile industry suffered from a 15 percent reduction in man-hours worked in 1982 compared to 1981.

All this has occured in the midst of increasing import penetration. The U.S. market share held by imported apparel rose to 41 percent in 1982, from 37 percent in 1981. Moreover, the United States continues to suffer from a substantial deficit in the textile and apparel trades. The trade deficit in textiles and apparel grew from $5.7 billion in 1981 to $7.2 billion in 1982.

Much has been said about the United States getting out of textiles and apparel and allowing the developing countries to supply our needs. This is simply not an option which the United States can afford. The national security needs for a viable textile and apparel industry are self-evident. Beyond that, it is difficult to identify any group that would stand to benefit by the demise of this industry.

The workers in this industry, as I am sure is well known to the subcommittee, are by necessity not highly mobile, nor are their job skills highly transferable. They are predominantly women or racial minorities and, in apparel manufacturing, are located predominantly in urban, inner-city areas or single industry rural towns. These workers are not able to pick up and move to Seattle to assemble aircraft; nor are they able to easily shift to other employment. A worker who loses his or her job in the textile and apparel industry too often becomes a worker without a job indefinitely.

The situation which exists in this industry is exemplified by New York City, where apparel is the largest single manufacturing industry. During the 1970s, unemployment in New York City increased by 105,000 workers. At the same time, the apparel industry shrank by 61,000 workers. This is not to imply that every worker exiting this industry winds up on the unemployment rolls, but certainly there were few opportunities for their reemployment in other industries.

Not only do the workers in this industry stand to lose if the textile and apparel industry is further battered by imports, but contrary to the belief of many, there would be little benefit to consumers if textile and apparel imports increased even further. The consumer price index for apparel has consistently increased at only about half the rate of the overall CPI.

Further, as we have testified time and time again, no one should be misled into believing that the retailer passes on to the consumer the benefit of lower prices for imports. It has been established clearly that importers take a much higher markup on imported products than they do on domestic products. That in and of itself is a major reason for the growth in imports.

An important reason why imports have been able to gain such a stronghold in the U.S. market and why they are hurting the U.S. industry so much is that imports are largely from low cost, low wage foreign countries. A comparison of the United States and foreign wage rates highlights the discrepancy between labor costs.

In 1981, the U.S. apparel industry paid, on average, across the country, union and nonunion, $4.94 per hour, excluding fringes, a wage well below the average U.S. manufacturing wage. Yet look at what some of the exporting countries were paying as of October 1981.

In Bangladesh, 10 cents an hour. In Red China, 16 cents an hour. In Colombia, 42 cents an hour. In Hong Kong, $1.18 an hour, an extraordinarily high wage for that part of the world. India, 38 cents an hour. Mexico, $1.57 per hour. Pakistan, 39 cents per hour. The Philippines, 25 cents per hour. South Korea, 63 cents per hour. Sri Lanka, 12 cents per hour. Thailand, 32 cents per hour.

We do not suffer in import competition from the fact that our workers are among the better paid in the United States, nor from the fact that our employers are ineffective, ineffectual, inefficient, or produce the wrong items for sale to the American consumer. Styles, fabric, the colors, the sizes and the patterns that go into the making of fabric and go into the making of garments mostly emanate, with very few exceptions, in the United States. Our creativity, our designs, our effort, our software, our machinery has been implanted in many countries around the world. And when they put that together in a labor-intensive industry with the wages that I just read, the competition is unbearable and literally impossible to meet.

Unfortunately, the textile and apparel industry is finding that a growing portion of the imports which are costing jobs and production to our industry are the result of foreign government subsidization and foreign company dumping. In this regard, and of interest to the subcommittee, we find that four aspects of the antidumping and countervailing duty laws have recently caused problems for the U.S. textile and apparel industry:

The time and expense involved in seeking relief under U.S. trade law; frustration of the impact of countervailing duty relief through suspension agreements; the effectiveness of the Subsidies Code and the administration's commitments policy for developing countries; and the treatment of nonmarket economy countries under the antidumping and countervailing duty laws.

The antidumping and countervailing duty laws are designed to deal with practices that the international trading community agrees are unfair and distort international competition. Countervailing duties and antidumping duties do no more than offset these unfair practices. They are not protectionist. They are designed to counter trade-distorting policies abroad.

Given this fundamental fact, why should a U.S. industry that is seeking to do no more than offset foreign unfair practices have to shoulder the burden of showing injury caused by the subsidized or dumped imports? Under U.S. law, injury is not easily shown. U.S. industry and U.S. workers must absorb a good deal of pain before they are entitled to relief from foreign trade-distorting practices.

In our view, there should be no injury test before foreign dumping or foreign subsidies can be offset. There is no justification for imposing such a burden on U.S. industry when all it seeks is to counter unfair trade practices. At the very least, the burden should be on the country using trade-distorting practices to demonstrate that its practices are not injuring U.S. industry. Until this problem can be rectified, the U.S. trade laws will remain fundamentally flawed.

Furthermore, it should never be assumed that restraints on imports on the MFA bilateral agreements remedy injury. Such agreements contain ceilings on different categories that are the result of give-and-take bargaining. Too often the levels that are negotiated result in ceilings that are too high to effectively remedy the injury that has been caused. Too often these levels are the result of an extraneous foreign policy considerations, not the need to offset the injury caused to U.S. producers and their workers.

Attached to my testimony are the details of our concerns with respect to the antidumping and countervailing duty laws borne out of the experiences of our industry, and I respectfully request, Mr. Chairman, that the attachments be entered into your official record.

Chairman GIBBONS. Without objection, so ordered.

Mr. CHAIKIN. Our country is beset today with serious economic problems. With over 11 million unemployed and perhaps an additional 1.5 million or more who have given up hope of finding a job, with a trade deficit that the administration estimates may be as high as $75 billion this year, and with industrial output so seriously depressed, the United States must act to prevent further erosion of its economic fabric and industrial base.

The trade statutes can play an important role in determining the future of our economy, but the present situation cannot continue. There is a need for innovative, perhaps even radical new approaches to this critical problem. I have just scratched the surface of what may be done, what needs to be done. Others will testify about their experiences. It will be up to this Congress and this administration to meet the challenge.

I thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF SOL C. CHAIKIN ON BEHALF OF THE TEXTILE/APPAREL IMPORT STEERING GROUP

Mr. Chairman, my name is Sol C. Chaikin, President of the International Ladies Garment Workers Union. I am appearing today on behalf of the Textile/Apparel Import Steering Group. The twenty trade associations and labor unions in our steering group (list attached) represent a major part of the fiber, textile and apparel industry in the United States.

We appreciate the opportunity to present our views on U.S. trade law -- an area in which the U.S. fiber, textile, and apparel industry is deeply concerned and actively involved. It is important that the Subcommittee in its deliberations, as they may affect the fiber, textile, and apparel sector, recognize a few key points regarding this industry.

I. ROLE OF FIBER, TEXTILE, AND APPAREL INDUSTRY IN THE U.S.

The U.S. fiber, textile and apparel industry is in a somewhat unique situation largely because of the Multifiber Arrangement which governs international trade in the products of our industry. In addition, import duties on textiles and apparel are, on the average, higher than the average U.S. tariff. We recognize this, and I know, Mr. Chairman, that you recognize it as well. In terms of national policy, there are overiding reasons why this is the case.

- The fiber, textile, and apparel industry is still the largest employer of labor in manufacturing in the U.S. One out of every eight jobs in manufacturing are in our industry. There are some 25,000 firms in the industry. Their combined output in 1980 was $114 billion.

- For every 100 workers employed in our industry, there are 50 others employed in other industries who depend on our industry for their jobs. These workers are in industries which supply our industry with chemicals, machinery, paper, and the like, or who transport materials to our factories and take our finished products to retailers for sale to consumers.
- Our plants are located in every one of the 50 states. They are in rural and semi-rural areas where alternative employment opportunities are limited. They are located as well in heavily populated metropolitan urban areas where unemployment rates are above the national average.
- The industry provides jobs for the semi-skilled. It is a substantial employer of women and of minorities. It provides entry level jobs to many who would not otherwise have jobs.
- The output of this industry is absolutely essential to the national security of our country.

In short, the fiber, textile, and apparel industry is fundamental to the entire U.S. economy. It contributes mightily to the strength of our economic system and our industrial base.

II. IMPACT OF IMPORTS

Notwithstanding these relatively unique circumstances, however, imports have taken and continue to take a devastating toll on this industry. U.S. imports of apparel have grown by about 8 percent per year during the last decade. The resulting number of job losses is staggering. Some 650,000 job opportunities have been lost over the last decade. The U.S. textile and apparel industry, which employed 2.4 million workers just ten years ago, now has only 1.9 million workers. The average unemployment rate in 1982 in this industry was an appalling 15.4 percent for apparel and 13.5 percent for textiles, and the latest unemployment rate figures for February 1983 remain above the rates recorded a year earlier.

Statistics for 1982 reflect the overall difficulties experienced by the fiber, textile and apparel sector in 1982. Domestic apparel production fell 10 percent in 1982 from 1981 levels. Based on fiber consumption, overall domestic production of textiles declined by 13 percent. Workers in the textile industry suffered from a 15 percent reduction in man-hours worked in 1982 compared to 1981.

All this has occurred in the midst of increasing import penetration. The U.S. market share held by imported apparel rose to 41 percent in 1982, up from 37 percent in 1981. Moreover, the United States continues to suffer from a substantial deficit in textile and apparel trade. The trade deficit in textiles and apparel grew from $5.7 billion in 1981 to $7.2 billion in 1982.

Much has been said about the United States getting out of textiles and apparel and allowing the developing countries to supply our needs. This is simply not an option which the United States can afford. The national security needs for a viable textile and apparel industry are self-evident. Beyond that, it is difficult to identify any group that would stand to benefit by the demise of this industry. The workers in this industry, as I am sure is well known to the Subcommittee, are by necessity not highly mobile nor are their job skills highly transferable. They are predominantly women or racial minorities and, in apparel manufacturing, are located predominantly in urban, inner-city areas or single industry rural towns. These workers are not able to pick up and move to Seattle to assemble aircraft, nor are they able to easily shift to other employment. A worker who loses his or her job in the textile and apparel industry too often becomes a worker without a job indefinitely.

The situation which exists in this industry is exemplified by New York City, where apparel is the largest single manufacturing industry. During the 1970s, unemployment in New York City increased by 105,000 workers; at the same time the apparel industry shrank by 61,000 workers. This is not to imply that every worker exiting this industry winds up on the unemployment rolls, but certainly there were few opportunities for their employment in other industries.

Not only do the workers in this industry stand to lose if the textile and apparel industry is further battered by imports, but, contrary to the belief of many, there would be little benefit to consumers if textile and apparel imports increased even further. The consumer price index for apparel has consistently increased at only about half the rate of the overall CPI. Further, as we have testified to time and time again, no one should be misled into believing that the retailer passes on to the consumer the benefit of lower prices for imports. It has been established clearly that importers take a much higher mark-up on imported products than they do on domestic products. That in itself is a major reason for the growth in imports.

An important reason why imports have been able to gain such a stronghold in the U.S. market and why they are hurting the U.S. industry so much is that imports are largely from low cost, low wage foreign countries. A comparison of U.S. and foreign wage rates highlights the discrepancy between labor costs. In 1981, the U.S. apparel industry paid, on average, $4.94 per hour, excluding fringes, a wage well below the average U.S. manufacturing wage. Yet look at what some of the exporting countries were paying, as of October 1981:

AVERAGE HOURLY WAGE RATES (EXCLUDING FRINGES) IN THE APPAREL INDUSTRY IN SELECTED COUNTRIES

Bangladesh	$0.10
China	0.16
Colombia	0.42
Hong Kong	1.18
India	0.38
Mexico	1.57
Pakistan	0.39
Philippines	0.25
Korea	0.63
Sri Lanka	0.12
Thailand	0.32

III. ISSUES ARISING FROM THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS

Unfortunately, the textile and apparel industry is finding that a growing portion of the imports which are costing jobs and production to our industry are the result of foreign government subsidization and foreign company dumping. In this regard, and of interest to the Subcommittee, we find that four aspects of the antidumping and countervailing duty laws have recently caused problems for the U.S. textile and apparel industry:

(1) The time and expense involved in seeking relief under U.S. trade law;

(2) Frustration of the impact of countervailing duty relief through "suspension agreements;"

(3) The effectiveness of the Subsidies Code and the Administration's "commitments policy" for developing countries; and

(4) The treatment of non-market economy countries under the antidumping and countervailing duty laws.

The antidumping and countervailing duty laws are designed to deal with practices that the international trading community agrees are unfair and distort international competition. Countervailing duties and antidumping duties do no more than offset these unfair practices. They are not protectionist -- they are designed to counter trade distorting policies abroad.

Given this fundamental fact, why should a U.S. industry that is seeking to do no more than offset foreign unfair practices have to shoulder the burden of showing injury caused by the subsidized or dumped imports? Under U.S. law, injury is not easily shown. U.S. industry and U.S. workers must absorb a good deal of pain before they are entitled to relief from foreign trade-distorting practices.

In our view, there should be no injury test before foreign dumping or foreign subsidies can be offset. There is no justification for imposing such a burden on U.S. industry when all it seeks is to counter unfair trade practices. At the very least, the burden should be on the country using trade distorting practices to demonstrate that its practices are not injuring U.S. industry. Until this problem can be rectified, the U.S. trade laws will remain fundamentally flawed.

Furthermore, it should never be assumed that restraints on imports under MFA bilateral agreements remedy injury. Such agreements contain ceilings on different categories that are the result of give-and-take bargaining. Too often the levels that are negotiated result in ceilings that are too high to effectively remedy the injury that has been caused. Too often these levels are the result of extraneous foreign policy considerations, not the need to offset the injury caused to U.S. producers and their workers.

Attached to my testimony are the details of our concerns with respect to the antidumping and countervailing duty laws, borne out of the experiences of our industry.

IV. CONCLUSIONS

Our country is beset today with serious economic problems. With over 11 million unemployed and perhaps an additional 1.5 million who have given up hope of finding a job, with a trade deficit that the Administration estimates may be as high as $75 billion this year, and with industrial output so seriously depressed -- the U.S. must act to prevent further erosion of its economic fabric. The trade statutes can play an important role in determining the future of our economy. But the present situation cannot continue. There is a need for innovative, perhaps even radical, new approaches to this critical problem. I have just scratched the surface of what needs to be done. Others will testify on their experiences. It will be up to the Congress to meet the challenge.

ISSUES ARISING FROM THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS

I. THE NEED TO STREAMLINE THE OPERATIONS OF U.S. ANTIDUMPING AND COUNTERVAILING DUTY LAWS

As a practical matter, the time and expense involved in prosecuting antidumping and countervailing duty cases poses a formidable barrier to effective use of these laws. When you tell a businessperson or a group of workers that they may petition for relief from unfair foreign import competition, but

(1) several months will pass without any action as the investigation proceeds;

(2) there is no guarantee that the case will be won;

(3) even if the case is won, the result can be undercut by an agreement suspending the antidumping or countervailing duty; and, in addition;

(4) it will cost petitioners at least $100,000 in legal fees in order to exercise what limited rights they have under the law,

the interest in bringing a case can fade pretty quickly.

If I am not mistaken, over $10 million was spend on legal fees in the recent steel cases. Something must be done to cut the complexity and expense of trade law cases. There is ample room to act.

The Department of Commerce could avoid lengthy exchanges of legal memoranda over relatively straightforward issues -- the legal equivalent of long base-line rallies -- by issuing decision memoranda in a case as soon as possible after issues arise. Finally, and perhaps most importantly, both the Commerce Department and the USITC could eliminate much of the expense of initiating and prosecuting a case if they worked more closely with the American firms and workers that seek trade relief.

II. THE PROBLEM WITH SUSPENSION AGREEMENTS

Nothing is more frustrating for a U.S. industry than to bring, and win, an antidumping or a countervailing duty case and then find out that defeat has been snatched from the jaws of victory because the United States has entered into an agreement with the foreign country or producers under which the antidumping or countervailing duties are "suspensed." On the surface, these agreements have appeal. In a subsidy case, for example, a suspension agreement might involve a commitment by the foreign government to impose an export tax in the amount of the subsidy on its exports to the United States.

In practice, however, these agreements eliminate any benefit that the U.S. industry might have derived from the case. One would think that if a country like Brazil were found to subsidize its cotton yarns and if, instead of countervailing duties, Brazil agreed to impose an export tax in the amount of the net subsidy found on its yarn exports to the U.S., the trade statistics would subsequently indicate that the export tax had an impact on the volume and/or the price of Brazilian yarn shipments to the United States.

In fact, a countervailing duty case on cotton yarn was brought, a subsidy was found, and the Brazilians agreed to impose a export tax on their yarn shipments to the United States. The problem is that there has been no discernable trade impact as a result. The volume of Brazilian exports has not declined and the price of Brazilian exports has not increased. The only possible conclusion is that the suspension agreement has been a sham. I have been told that other industries -- steel, for example -- have had similar experiences.

We should simply eliminate suspension agreements and export tax offsets from the law. If a country subsidizes its exports to the United States, an offsetting countervailing duty should be imposed; if foreign producers dump in the U.S. market, antidumping duties are the answer. Suspension agreements have left a bad taste in the mouth of virtually every U.S. industry that has had experience with them.

In this regard it is important to note that suspension agreements are often violated by foreign governments. Uruguay and Argentina in the case of leather wearing apparel are two cases in point. Unfortunately the Commerce Department does not undertake a constant monitoring of these agreements but relies instead on annual reviews to do so. An even worse situation for the U.S. occurs when a foreign government commits itself to terminate its subsidies, may

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even do so, receives the injury test from the U.S., and then reneges on its commitment for its own national reasons. Brazil is clearly a case in point. Uruguay is another.

III. DEVELOPING COUNTRIES AND THE SUBSIDIES CODE

Just as the United States has been swayed by "foreign policy" pressures to enter into ineffective suspension agreements, so too has the Administration been subject to strong pressures to extend an injury test to developing countries that had not shown the slightest interest in accepting any discipline over their own subsidy practices before a countervailing duty case was brought. When the Carter Administration negotiated the Subsidies Code in the Multilateral Trade Negotiations, we in the private sector were assured that the United States would demand meaningful commitments from developing countries to phase out their export subsidy practices before according them the one piece of leverage that we hold -- an injury test before a countervailing duty is imposed. Indeed, the commitment made by the Carter Administration to secure national support for the Subsidies Code and the implementing legislation included not granting an injury test on those products, primarily labor-intensive, import-sensitive products such as textiles and apparel, where the developing countries already had a significant share of the U.S. market.

Unless such commitments were given, we were told, the U.S. would not give exports from those countries the benefit

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of an injury test under U.S. countervailing duty law. Very little remains of this "commitments policy." It started to fall apart when the Carter Administration gave Pakistan in injury test in return for a vague and meaningless subsidy commitment. The situation deteriorated further when this Administration accepted an equally useless commitment from India.

The scenario has been the same in case after case. A developing country is not at all interested in discussing its subsidy practices until a countervailing duty case is filed. However, when the case is filed, the country becomes very interested in receiving an injury test. Strong foreign policy pressure is brought to bear on the Administration.

The latest example with which I am familiar involved Peru. Countervailing duty cases on cotton sateen and sheeting and on cotton yarn were filed. The Government of Peru, with full approval from its friends in the State Department, pressed for a U.S.-Peruvian agreement on subsidies. The agreement contemplated by Peru was a sham. It was described by a senior Peruvian official as follows:

> The agreement would have been deliberately worded ambigously,...allowing Peru to bear in mind its own legal framework. [T]he proposal was put forward by Peru.
> We felt this would have given us three years to design new ways to give (exporters) less obvious help.... .

To his credit, Ambassador Brock resisted the pressure to accomodate Peru. As a result, the President of Peru cancelled a planned visit to Washington. Predictably, the

State Department view was that trade policy was interfering with foreign affairs.

From our point of view, however, the problem is just the reverse. Short term foreign relations problems are far less important than the longer term interests of this country in a solid and sensible trade policy. The decision not to sacrifice trade policy principles in a sham agreement with Peru was a good one. The Peruvian example should be followed as similar cases arise in the future. We are not wrong to insist on meaningful discipline over foreign subsidy practices.

IV. NON-MARKET ECONOMY COUNTRIES UNDER THE ANTIDUMPING AND COUNTERVAILING DUTY LAW

The treatment of non-market economy countries under the antidumping and the countervailing duty laws raises special problems. As a practical matter, these countries have been all but exempt from countervailing duties. There is no indication of how the Administration would approach a non-market economy "subsidy" problem.

Yet, such subsidies clearly do exist. For example, a non-market economy country will often target a specific sector for export development. According to the U.S. government's own analysis, China has done this in textiles. Also, these countries frequently use multiple exchange rate systems that are designed to stimulate exports and discourage imports. A clear statement by the Department of

Commerce indicating how the countervailing duty law applies to non-market economy countries would be very helpful.

As for dumping, the current law and practice cause major difficulties for U.S. companies or workers seeking relief. Dumping by a non-market economy is assessed by comparing that country's pricing with the pricing practices of a market economy country at a comparable stage of development. This is the so-called "surrogate country" approach.

The surrogate country approach may, in fact, be the best of a number of bad options. Problems with it could be minimized if greater care were taken in the selection of a surrogate country. At present, the Department of Commerce looks primarily at macroeconomic indicators -- for example, at how a potential surrogate country compares with the non-market economy country in terms of per capita GNP.

While this sort of comparison is one factor, other issues are equally important. If, for example, the case involves textiles, the Department should analyze the textile industries in possible surrogate countries in order to select a surrogate country that has a textile sector comparable to the textile sector in the non-market economy country. Also, the Department should not select a surrogate country that subsidizes its production and/or exports.

One would think that this last point is self-evident. However, in a recent textile case the Commerce Department selected Pakistan as a surrogate for the People's Republic of China even though, in another case, Commerce had found that Pakistan subsidized its exports of the product in question by 12.5%. Fortunately, Pakistan declined the invitation to cooperate. Had Pakistan been used as a surrogate, we would have seen a subsidized Pakistani export price (i.e. an "unfair" export price) being used as the standard for "fair value" for PRC exports. Such a perversion of law is absurd.

I hope that the Subcommittee will review with Commerce ways of improving the surrogate country selection process. It would help to bring greater sense and certainty into the operation of law. An improved surrogate country selection process is, in our opinion, a better option than at least one of the alternative approaches to the non-market economy country issue.

There has been a proposal to gauge non-market economy dumping by comparing the non-market economy country prices in the U.S. market with the lowest priced imports for a market economy country. The problems with this approach are many and significant. Assume, for example, that the product involved is printcloth from China. Printcloth is a commodity item. As China lowers its price, other foreign suppliers must follow suit or withdraw from the market. In fact, the Chinese price will determine the prices at which market economy countries, such as Thailand, sell in the U.S. market. A comparison of Thai and Chinese export prices to

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the U.S. market will show small dumping margins or none at all, since the Thais will have to match the Chinese export price.

Also, consider the following. A market economy such as Pakistan exports low priced, subsidized textiles to the United States. However, the quantities are small. There is no "injury" caused by Pakistani exports, so a countervailing duty case is not brought. The PRC, on the other hand, exports huge quantities at a price equal to the Pakistani price. The Chinese are disrupting the market. Should the Chinese be let off from any possible dumping liability just because they are not undercutting the subsidized Pakistani price? The answer must be no.

Procedures involving the non-market economy country problem need to be improved by, at least, (1) clarifying the circumstances under which a countervailing duty case against non-market economy countries can be brought and (2) improving the surrogate country selection process in non-market economy antidumping cases.

Attachment

The members of the American Fiber/Textile/Apparel Coalition are the following 20 associations and unions:

Amalgamated Clothing & Textile Workers Union

American Apparel Manufacturers Association

American Textile Manufacturers Institute

American Yarn Spinners Association

Carpet and Rug Institute

Clothing Manufacturers Association of the United States of America

International Ladies' Garment Workers' Union

Knitted Textile Association

Luggage and Leather Goods Manufacturers of America

Man-Made Fiber Producers Association, Inc.

National Association of Hosiery Manufacturers

National Association of Uniform Manufacturers and Distributors

National Cotton Council of America

National Knitwear Manufacturers Association

National Knitwear & Sportswear Association

National Wool Growers Association

Neckwear Association of America

Northern Textile Association

Textile Distributors Association, Inc.

Work Glove Manufacturers Association

Chairman GIBBONS. Do any others at the table have statements they'd like to make?

Mr. CHAIKIN. I believe they are with me to buttress the testimony which has just been made and to respond to any questions which the members of the committee may have.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. I have no questions, Mr. Chairman.

Chairman GIBBONS. Mr. Pease.?

Mr. PEASE. Mr. Chairman, I just have one question. I'd like to thank the witness, Mr. Chaikin, for his testimony and ask whether—I think you mentioned that we shouldn't have to prove injury—dumping in and of itself should be illegal and should be subject to countervailing duties or whatever. That is a concept that is shared by some management people, exporters in my district who are affected by import penetration.

Is there an analogy here of somebody who goes out and is able to buy 30,000 shirts because of a company going out of business and then offering them for sale at retail someplace?

Mr. CHAIKIN. No, there is no analogy in that regard. After all, trade within the borders of the United States depends on many factors. And sometimes goods are sold off-price because of some error that has been made in its design or in its production or some error in judgment insofar as the right colors or the feel and texture of the fabric.

We have seen only in the last year or two, I guess, the large discounts when automobile manufacturers find that the cars start backing up and filling up their lots, and it is a merchandising technique with which industry in the United States and the workers employed by them are accustomed to. We all accept the vagaries and occasional benefits and harm of a free market economy within the borders of the United States.

But that is not the case when goods are dumped from overseas. The fact of the matter is that they are dumped for many reasons. From the nonmarket economies, the goods are priced in accordance with the necessity of the foreign country to raise hard currency. For whatever their national needs may be, their goods are never priced in accordance with the true value of the fabric or of the labor or of the expense of manufacturing.

We have seen this time and time again, when their goods have entered the U.S. market on a regular basis, we have broken everything down; we have considered everything that occurs in the foreign country; and we have good knowledge of the values, in terms of how much time goes into the making of the fabric, how much time goes into the making of the apparel, and there is no way that we can come to their bottom line without an absolute showing of huge subsidy, which the foreign country absorbs.

Now the same thing is true in many other areas. In the case of apparel, for example, there rarely needs to be a subsidy, as you and I might know it, because of the extraordinarily low wages. The only place where the foreign exporters compete with domestic manufacture, and now I am talking about a nonunion plant, for example, in Mississippi or North or South Carolina, where the wages paid are hardly above the Federal national minimum wage, there is no way a nonunion southern garment manufacturer can compete because everything is common. The same type of fabric, the same quality of fabric, the same machinery, the same software, the same knowledge of how the garment is produced and flows from one worker to another. Everything they have is in common with us. They use American styles, American patterns, American sizes. They are manufacturing for the American market.

The only difference is that if Red China pays its workers in the commune an effective wage of about 16 cents an hour. How do you compete against something like that, where the only variable really is the amount of wage costs that go into the garments. And here I don't even count the fringe benefits that are applied on top of an average $5 an hour wage across the country, union and nonunion, in the textile and apparel industry. There is about 35 to 40 percent of fringe benefits applied to the $5 per hour. There is no such amount of value of fringe benefits applied to the foreign wage that I have listed for you.

Mr. **Pease**. OK, thanks. Would you also comment on the concept of proving injury, whether dumping has been proved? As we know now under the law, there has to be a further determination by the ITC whether injury has occurred. I am always intrigued by that concept. In a period of high unemployment such as we have now, it appears to me that any dumping, whether it is 2,000 shirts or 2 million shirts, is going to provide injury to somebody. Some workers are going to get laid off as a result.

Would you agree with that? Is there a distinction between cases where injury is caused and injury is not caused at the domestic level?

Mr. **Chaikin**. Well, I am sure there must be some cases where you could distinguish between the two. In some areas, in some industries the fact of dumping speaks for itself, and the fact that injury flows from the dumping should be accepted, just as though the court should take judicial notice of the fact that one follows the other, just as day follows the night.

In the apparel industry, because we have bilateral treaties with 20-some odd exporters to the United States, and because these treaties set quotas and they set quotas not only in terms of the fabric, which is either wool or cotton or a mixture or a manmade fiber and any mixture of manmade fibers plus natural fiber. We not only have quotas in that area, but we have quotas in the actual types of apparel which is manufactured—trousers, shirts, blouses, skirts, dresses, lingerie, and many other categories.

It is very difficult for us to prove injury if Pakistan were to ship in 10,000 dozen of a particular item. Although we know what results, for us to come and claim injury would be almost impossible to prove. Because of the peculiar nature of the apparel industry, our remedies lie outside of injury and countervailing duties.

But in the textile part of the entire industry, yes, injury can be shown, but it is often an impossibly long and expensive process. And the International Trade Commission and the executive do not avidly pursue these claims. And indeed, very often, in spite of knowledge that injury has been done to some part of the domestic industry, whether steel or textiles, the executive has not been prone to pursue it because of other international foreign policy considerations.

Mr. **Pease**. Speaking of the cost of pursuing these determinations, would you think it would be reasonable for the Federal Government to assume the cost of pursuing 201 or 301 petitions, or at least that industry people ought to be able to petition the Federal Government to pursue those complaints, and then have the Federal Government pick up more of the cost? We were told this morning that the average cost is $1 million, which certainly is pretty tough for a lot of small firms.

Mr. **Chaikin**. I surely do agree that that would be very helpful. Since these are matters within the national interest, and where some of the benefits which should accrue to workers and indeed, to employers, are occasionally sacrificed because of "the perceived national interest," I do believe that the Government of the United States, once a complaint is made, and very, very few of these complaints are made frivolously, that the Government of the United States ought to pursue the complaint and bear the cost of it.

You talk in terms, Mr. Congressman, of some of these actions costing $1 million or more in legal fees. Now that is separate and apart from the lost time of executives who ought to be at their business and ought to be planning for business, ought to be selling the products and ought to be planning the production. It is lost time in a number of other areas.

But that is not unusual. Undoubtedly in some cases the fees run up to $5 to $10 million, depending on the severity of the complaint, depending on the nature of the evidence that has to be hunted up, and depending on the time that it takes to get through these extended hearings.

Mr. **Pease**. One last question. It has come to my attention that we get sometimes less than complete information on imports coming into this country—where they come from, who is doing the shipping, and all that sort of thing. Would you feel that additional information on the public record would be helpful to industry people like yourselves in determining whether there is dumping and whether cases ought to brought?

Mr. **Chaikin**. Well, there is no question of that. Our union, and indeed our combined overall textile/apparel import steering committee and the 20 groups associated with us have been arguing for many, many years that the information coming out of our customs people ought to be beefed up, that the information ought to be more accurate, that it ought to come to us in a much more timely fashion. We argued in past years for computerization, and I am happy to say that it has been computerized to some extent, and more needs to be done.

Obviously, information is most valuable, and accurate information is what everybody concerned can surely use. We need that badly.

Mr. **Pease**. Thank you very much.

Chairman **Gibbons**. Mr. Jenkins?

Mr. **Jenkins**. Thank you, Mr. Chairman.

I want to thank you for your testimony and apologize that I was not here at the beginning of your testimony. As a matter of fact, I have been engaged with the State Department on a textile matter of great interest.

I think it would be meaningless to set forth my views, because they are well known in this particular field. I simply want to commend you for your statement. I would hope that not only the textile caucus but all Members of Congress would take a little time to really look at the problems that this industry continues to face and how it continues to add to the cost of Government, simply because of the tremendous unemployment rate that we are now facing in the textile industry. Unfortunately, it appears that we will continue to face these problems for some time.

I thank you for your interest and testimony.

Chairman GIBBONS. Thank you. I can assure you that there are few people that match the effectiveness of Mr. Jenkins when it comes to safeguarding the interests of your group. He is very, very adept.

This concludes our witness list for today. Of course these hearings will go on tomorrow and for more days before we begin our deliberations.

The hearings will continue tomorrow at 9:30 a.m. in room 2247 of the Rayburn House Office Building.

[Whereupon, at 3:40 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., Thursday, March 17, 1983.]

OPTIONS TO IMPROVE THE TRADE REMEDY LAWS

THURSDAY, MARCH 17, 1983

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 2247, Rayburn House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman **Gibbons**. Good morning and happy St. Patrick's Day.

This is the second day of hearings on options to improve the trade remedy laws. As you know, these are rather broad-ranging hearings because we are in search of answers to the problems that most of us have been able to identify with these laws.

Our first witness this morning is our colleague, the Honorable Dan Coats, Member of Congress from Indiana.

Mr. Coats has been very active in trade legislation in his career here. Dan, I welcome you to this hearing this morning and you may proceed as you wish.

STATEMENT OF HON. DAN COATS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. **Coats**. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am grateful for this opportunity to appear before you this morning to join in this much needed review of the effectiveness of the laws shaping our international trade policy. I am pleased to be sitting here today with Mr. Bywater and Mr. Olmstead, who by virtue of their offices and experience can provide information which will go a long way toward enhancing our understanding of the strengths and weaknesses of U.S. trade policy.

Mr. Chairman, my interest in this complex issue is fairly simple: I represent the city of Bluffton, Ind., in which a Corning Glass Works plant is located. As the chairman may know, this plant has been severely hurt by the unfair administration of existing trade laws and will be shut down in mid-May unless these inequities can be addressed in a timely fashion.

Needless to say, we are making every effort to keep the plant open and also to prepare for the consequences of its possible closing. The situation is a difficult one, especially for the community, which will be adversely affected if the plant closes. As I say, we are making every effort because we are extremely concerned about Corning's announced intentions.

I am aware that the Bluffton, Ind., situation is not the primary concern of the subcommittee this morning. It is important to note, however, that the Bluffton experience provides a clear illustration of many of the problems with our existing trade laws. I would like to take just a moment to speak on some of these problems from the perspective of the Bluffton-Corning community.

Bluffton is a town of roughly 8,700 people located about 20 miles south of Fort Wayne. Corning opened its plant in Bluffton in 1965 and at its peak employed more than 850 people. Today, the plant employs about 450.

The Bluffton-Corning plant produces glass envelopes which become color television picture tubes. As I believe Mr. Olmstead's testimony will verify, the color TV picture tube is the single most expensive part of a color television; the production of picture tubes is particularly sensitive to economies of scale. Overcapacity in the Japanese color television picture tube market has led the Japanese to "dump" picture tubes on the American market and cause the serious problems we face today.

The gentlemen on this panel this morning are prepared to substantiate in detail the fact that the domestic television industry has utilized virtually every resource available to it to achieve fairness in the domestic marketplace. I do not intend to duplicate their efforts but allow me to emphasize one point.

In 1968 the domestic television industry filed a dumping petition against imports of televisions from Japan. In 1971, an affirmative dumping finding was issued, and penalties were assessed. But there followed a period of delays during which time antidumping duties were not collected. By the late seventies, the penalties were estimated to have accumulated to hundreds of millions of dollars. Please remember that these penalties were assessed on the basis of an affirmative finding of dumping.

In April 1980, the Department of Commerce announced that a settlement had been reached and that between $75 and $77 million would be paid by the importers. The settlement was immediately challenged in court by the domestic television industry and that is where we find ourselves today—waiting to collect duties on a finding of dumping made more than a decade ago.

Frankly, Mr. Chairman, I am exasperated by the delay and the chicanery which have come to characterize this matter and my frustration has led me to search for remedies. I believe the chairman is aware of my opposition to rising protectionist trade barriers; we have worked together to oppose enactment of domestic content legislation and I look forward to his continued leadership in this area.

But I am also concerned that our policy of open markets also contain the essential element of fairness. The people of Bluffton, Ind., are not asking for special treatment; they are simply asking for a fair shake—in this case, a fair administration of a clear violation of laws which are already on the books. There is nothing more fundamental than the need to make our international trade policy fair and enforceable.

I am currently preparing legislation which would restrict the authority of the administration to negotiate away antidumping duties. It makes no sense to me to establish rigorous proceedings for the assessment of penalties and then allow those penalties to be negotiated or traded away to suit another purpose. This is especially grevious when such action affects American jobs.

I hope that I can work with the subcommittee and other interested parties to fashion such a restriction which preserves the letter and the spirit of the law but which does not unduly limit the effectiveness of our trade negotiators.

I also look forward to the leadership of the subcommittee on other aspects of our trade policy, including trade adjustment assistance, unemployment compensation, jobs training programs, and other forms of humanitarian relief for displaced workers. At this point, I want to commend Corning for offering a fund of up to $200,000 for emergency relief in the Bluffton community. There are questions existing as to how this money will be used, but I am confident that agreements can be reached which will make these funds available for those who need them.

I would also like to take this opportunity to encourage the subcommittee to explore the benefits of trade reciprocity legislation. It is an issue I am continuing to study, but even at this point I share the feelings of many of my constituents that we should not tolerate unfair barriers to our products in foreign markets. We should be mindful of the principle of "comparative advantage" but we must also vigorously resist efforts to limit our access to foreign markets.

In conclusion, Mr. Chairman, I would simply note again that the experiences of Bluffton, Ind., are not unique. Sadly, small towns and large towns across the country are being wracked by the consequences of unfair trading practices. The problem is not solved by building walls around ourselves; by that we simply lose our ability to produce for an international market.

But we must be aware that we will continue to pay an extraordinary cost in human terms if we do not take steps to insure that our trading policy is fair to those it is meant to serve—our very own workers and industries.

I thank the subcommittee for its patience and its attention to these problems and I stand ready with these gentlemen here to assist in any way that I possibly can.

I thank the Chairman for the opportunity to address you on this matter.

Chairman GIBBONS. Mr. Coats, I appreciate you making the statement that you have. I agree with you. Our trade laws should be vigorously and fairly enforced and when a decision has been made the remedy ought to be applied.

If the remedy is inappropriate it should be up to the legislative branch to change the remedy. It should not be negotiated away for some other advantage to either our Government or to some other business in this country. My position is that the victim ought to get the benefit from the affirmative finding.

Mr. COATS. I appreciate that position, Mr. Chairman. If you would allow I would like to reiterate that point because what I think is potentially happening here is that a pattern is being established whereby a nation that engages in unfair dumping practices in order to establish a market share, in order to capture a market share for a particular period of time, if it knows that a number of years will ensue from the date of the assessment of the fine or penalty, or that—and during that time or at the end of that time negotiations can be had which will essentially negotiate away the assessment, then I think it is easy to come to the conclusion that, well, let's go ahead, let's go ahead and take the risk of dumping even if we are judged guilty in accordance with the laws of the United States. We can drag this out long enough so that we will end up with a market share or have accomplished our purpose or we can negotiate away in a new administration a penalty that was assessed in the last administration.

The unfortunate consequence of all that is that it comes down to human terms and in this case the human terms are the loss of hundreds of jobs in a small community that cannot afford to lose those jobs and a real burden placed on families that have come to depend on those jobs. And on workers that have in this case made extraordinary concessions.

We are at the point where the workers could work for nothing and it wouldn't make any difference.

Chairman **Gibbons**. Let's go ahead and hear from the rest of your panel. Let me say though at the beginning, I believe we should live in a world and rule of law rather than a world and rule of negotiation. If our laws are not adequate we ought to change our laws, we ought not constantly be trying to negotiate some advantage for someone and use other people as bargaining chips.

I just don't believe in that. Let's go ahead and hear what you have to say.

STATEMENT OF FRANCIS H. OLMSTEAD, JR., VICE PRESIDENT AND GENERAL MANAGER, ELECTRICAL PRODUCTS DIVISION, CORNING GLASS WORKS, REPRESENTING THE COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (COMPACT), ACCOMPANIED BY DAVID A. HARTQUIST AND PAUL D. CULLEN, COUNSELS

Mr. **Olmstead**. Good morning, Mr. Chairman, and members of the subcommittee, I am Francis Olmstead, Jr., vice president and general manager, Electrical Products Division, Corning Glass Works, Corning, N.Y., and cochairman of the Committee to Preserve American Color Television.

Last week I had the unpleasant task of informing approximately 750 employees of Corning's Bluffton color TV plant that we were ceasing operations in mid-May. A significant cause for this action is continuing increases in set and tube imports.

Unless current trade laws are amended, I sincerely believe that more color television plants will have to cease manufacturing operations in the United States in the very near future.

I am pleased to be joined by my colleague, Mr. William Bywater, president of the International Union of Electrical, Radio, and Machine Workers.

The members of Compact, a coalition for free trade but fair trade, appreciates this opportunity to testify before the Subcommittee on Trade today. We believe we are in a good position to comment on amendments to the trade laws because the domestic television industry has been so deeply involved in this issue over the years.

The Committee to Preserve American Color Television is comprised of 11 labor organizations and 4 corporations engaged in the manufacture of finished television receivers and their various parts and components.

The history of the efforts of the American color television industry to deal with the import problem is littered with examples of the inability of U.S. trade laws to eliminate unfair trade practices.

Beginning in the early 1970's, individual members of the TV industry have resorted to practically every trade statute on the books in an effort to achieve fair competitive conditions in the domestic marketplace. The color television industry is a showcase example of how the trade laws have sometimes succeeded and sometimes failed to provide meaningful relief for an industry that has been systematically attacked by overseas competitors for over a decade.

Our written submission documents the use of the antidumping law, countervailing duty law, section 201, section 337, and the Antidumping Act of 1916.

The color television picture tube is the single most expensive component used to assemble color televisions. The production of glass envelopes used to make color TV tubes and the production of the tubes themselves are both highly capital-intensive activities. The cost structure at both the glass and tube levels of production is such that the underutilization of production capacity tends to drive costs upward, while the utilization of full production capacity tends to have a very beneficial impact on incremental profits.

The availability of excess tube capacity in Japan is the source of pressure to export color picture tubes. Japanese color picture tube production capacity is presently estimated to be 30 million units annually with a home market demand of only 6 to 7 million units. It is clear that the need for Japanese producers to utilize the substantial color picture tube production capacity will result in increased imports of color television sets if the current antidumping case against Japan is revoked.

In summary, individual members of the domestic color television industry and their workers have used practically every provision in the U.S. trade laws in their pursuit of relief from continued unfair trade practices by foreign producers. Despite these efforts and some successes, the industry today is still fighting the battle.

Based on our extensive experience we feel that we are in a good position to recommend additional changes to the domestic trade laws in the following areas:

(1) Settlement authority over the assessment of antidumping and countervailing duties. Perhaps this is the most important.

One of the major reforms contained in the Trade Agreements Act of 1979 was the creation of major procedural rights for members of the domestic industries and their workers in administrative assessment of antidumping duties.

Nevertheless, the Department of Commerce has circumvented these procedural rights in the assessment process by entering into bilateral settlement agreements with importers.

Section 617 should be amended to exclude from its terms the possibility of compromising antidumping and countervailing duty cases.

(2) Standing to initiate and/or participate in antidumping proceedings. The Trade Agreements Act of 1979 attempted to define the term "interested party" so as to establish who would be entitled to participate in antidumping and countervailing duty proceedings. Unfortunately, the definition of interested party under section 771(9) did not explicitly include labor-industry coalitions such as Compact which have been formed specifically to enforce the rights of producers and workers under trade laws.

The Court of International Trade has held that labor industry coalitions like Compact are not interested parties within the meaning of the antidumping law.

We recommend that section 771(9) be amended to permit labor-industry coalitions to initiate and participate in antidumping and countervailing duty processings and to encourage a more flexible and lenient interpretation by the court in the future.

The definition of "like product" should also be expanded to permit participation in antidumping and countervailing duty proceedings of those associated with production of parts and components irrevocably destined for incorporation in the imported article.

(3) Adjustments to foreign market value on account of differences in circumstances of sale and differences in merchandise. The Commerce Department has in a number of cases permitted a variety of adjustments to foreign market value on account of claim differences in circumstances of sale and claimed differences in merchandise. We believe that many of these adjustments have caused margins of dumping to be significantly understated.

These problems could be eliminated and the intended meaning of the antidumping law restored if the amendments suggested in our written statement were adopted.

(4) The exporters' sales price offset. The margin of dumping is supposed to be the difference between the foreign market value of comparable merchandise and the United States price of the exported item. The antidumping law was written to take into account there are two classes of export transactions and that the margin of dumping should not vary significantly between these classes.

These classes are called "purchase price" transactions and "exporters' sales price," ESP transactions.

Our written statement spells out in greater detail the problems which have developed through the Commerce Department's inappropriate use of the ESP offset. We believe that this is inconsistent with the statutory approach created by Congress and recommend that section 773(a) of the act be amended as suggested in our written statement.

(5) Eliminate the presumption of administrative regulatory and correctness of decisions by the administrating authority. The domestic industry has long been frustrated by interpretations given to the antidumping law by the Treasury Department and now by the Commerce Department.

Compact was shocked to learn that none of the Government officials who participated in the April 28, 1980, settlement agreements bothered to consider what the implications of the settlement were for the domestic industry and its workers.

We recommend that the judicial review provisions of the antidumping and countervailing duty law be amended to eliminate any presumption in favor of or against agency action.

(6) Amendments to the Antidumping Act of 1916. Although the Antidumping Act of 1916 was designed to provide a private antitrust type remedy; the 1916 act has never provided a truly effective remedy. Compact believes that a workable private remedy for dumping is badly needed to supplement the public remedy under title VII of the Tariff Act of 1930.

The 1916 act should be amended to eliminate the burdensome requirement of establishing an intent to injure a U.S. industry and to eliminate the criminal penalties so as to make this a strictly private remedy.

(7) And last, the definition of "like" or "directly competitive". Section 201(b)(1) of the Trade Act of 1974 provides that in order to make an affirmative determination the ITC must find that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry producing an article like or directly competitive with the imported article.

However, as a result of judicial interpretation, producers of component parts cannot petition under section 201 for relief based on imports of finished products which contain the components.

We urge the section 201(b)(1) be amended to permit producers of component parts to file petitions based on importation of the finished articles, particularly where such component parts are irrevocably destined for use in the finished product.

Mr. Chairman, and members of the subcommittee, thank you again for this opportunity to testify. Unless there are meaningful amendments to existing trade laws, the color television industry in the United States of America will continue to lose ground to unfair imports and will eventually die. Our industry needs your help.

I will be glad to answer any questions that I can at this time.

[The prepared statement follows:]

STATEMENT OF THE
COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION
(COMPACT)
BEFORE THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVE
SUBCOMMITTEE ON TRADE

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March 17, 1983

Mr. Chairman and Members of the Subcommittee: The members of COMPACT appreciate this opportunity to testify before the Subcommittee on Trade today. We believe we are in a good position to comment on possible amendments to the trade laws because the domestic television industry has been so deeply involved in this issue over the years.

The Committee To Preserve American Color Television (COMPACT) is an unincorporated association comprised of 11 labor organizations and four corporations engaged in the manufacture of finished television receivers and their various parts and components. Since its organization in 1976, COMPACT has represented the interests of the domestic television industry and its workers in various administrative and judicial proceedings under the U.S. international trade laws. COMPACT has actively participated in various phases of the administration and enforcement of T.D. 71-76, the Secretary of the Treasury's formal dumping finding respecting television receivers from Japan.

The participants in COMPACT include the Industrial Union Department, AFL-CIO; the Allied Industrial Workers of America, International Union; the American Flint Glass Workers Union of North America; the Communications Workers of America; the Glass Bottle Blowers' Association of the U.S. and Canada; the Independent Radionic Workers of America; the International Association of Machinists; the International Union of Electrical, Radio and Machine Workers; the International Brotherhood of Electrical Workers; the United Furniture Workers of America; the United Steelworkers of America; Corning

Glass Works; Owens-Illinois, Inc.; Sprague Electric Company; and Wells-Gardner Electronics Corp.

The history of the efforts of the American color television industry to deal with the import problem is littered with examples of the inability of U.S. trade laws to eliminate unfair trade practices. Beginning in the early 1970s, individual members of the TV industry have resorted to practically every trade statute on the books in an effort to achieve fair competitive conditions in the domestic marketplace. The color television industry is a showcase example of how the trade laws have sometimes succeeded and sometimes failed to provide meaningful relief for an industry that has been systematically attacked by overseas competitors for over a decade.

JAPANESE ANTIDUMPING CASE

In 1968 members of the domestic television industry filed a dumping petition against imports of televisions from Japan. Although an affirmative finding was issued in 1971, only minimal antidumping duties were collected until the late 1970s while a huge backlog of unliquidated customs entries accumulated. During this period imports of color television receivers climbed to as high as 29 percent of domestic consumption, and a number of domestic producers were driven from the business.

In response to the Treasury Department's mismanagement of this and other cases, the 96th Congress enacted three major reforms in the nation's trade laws. First, Congress passed the Trade Agreements Act of 1979 which contained extensive procedural safeguards for domestic industries, including rights to participate in the assessment phase of antidumping proceedings and to obtain judicial review of assessment determinations. Second, Congress enacted the Customs Courts Act of 1980 which created a new court, the U.S. Court of International Trade. The new Court was given expanded equity powers to permit it to properly supervise Executive Department action in trade cases. Finally, jurisdiction over the administration of new antidumping law was transferred from the Treasury Department to the Commerce Department. This three-pronged attempt to reform the federal government's international trade regulation apparatus raised hopes among domestic interests for a more vigorous enforcement of the antidumping law. Unfortunately, some of those hopes have been dashed by the Commerce Department's administration of the television case.

On April 28, 1980, the Commerce Department bypassed the detailed provisions of the antidumping law and settled outstanding liability for antidumping duties. Commerce cited an obscure provision of the customs laws (19 U.S.C. § 1617) -- which had never been used to compromise antidumping duties -- as authority for its action.

COMPACT and Zenith Radio Corporation directly challenged the settlement. During the pendency of that challenge in the Court of International Trade, however, the U.S. Court of Customs and Patent Appeals ruled that the Commerce Department was authorized to bypass the assessment procedures of the 1979 Act and that the Court of International Trade lacked jurisdiction to review the substance of the decision to settle. Montgomery Ward & Co. v. Zenith Radio Corp., 673 F.2d 1254 (CCPA 1982) cert. denied, 103 S.Ct. 256. The CCPA's decision holds that the Secretary of Commerce possesses unfettered discretion to ignore the antidumping law and compromise antidumping duty liability without regard to the specific procedures of the antidumping law related to duty assessment. Further, it eliminates the domestic industry's right to judicial review of the assessment process -- a right specifically granted by the 96th Congress.

When the Supreme Court refused to accept review over the Montgomery Ward decision, COMPACT sought to amend its complaint in the lower court. The new complaint challenged the validity of the settlement on the grounds that it was procedurally defective. COMPACT presented evidence that the documents offered by Commerce in satisfaction of the compromise statute failed to comply with the required procedures.

The Court of International Trade, nevertheless, ruled that it could not even consider that evidence under Montgomery Ward. It limited judicial review to ascertaining mere technical compliance with the statutory procedures. On that basis, the court entered judgment against COMPACT and dismissed the case.

COMPACT is now appealing this decision. On December 2, 1982, the new U.S. Court of Appeals for the Federal Circuit (which was created recently by merging the CCPA and the Court of Claims) entered an injunction pending appeal restraining Commerce's implementation of the settlement agreements. Briefing on the merits was completed on January 26, 1982, and oral argument was heard on February 7, 1982.

It would be inappropriate for COMPACT to comment here on issues which are presently before the Court of Appeals for the Federal Circuit. That court has indicated, however, that it will not overrule the Montgomery Ward decision, and so the general proposition regarding the applicability of 19 U.S.C. § 1617 is apparently not a matter under active consideration by that court. We do not believe that the 96th Congress intended to permit the administering authority to compromise antidumping duties under 19 U.S.C. § 1617 or otherwise. We urge that the antidumping law be amended to preclude future settlements under 19 U.S.C. § 1617. S.539, introduced recently by Senator Goldwater, would accomplish this result, and we support that legislation.

The April 28, 1980 settlement agreements have had ramifications far beyond the compromise of duties on specific television receivers. COMPACT believes that the April 28, 1980 settlement agreements compromised what should have been several hundred million dollars in potential antidumping duties for 10¢ on the dollar. In an attempt to rationalize the compromise decision and in order to reduce the potential liability of importers to a level which would permit compromise, the Commerce Department decided virtually every legal and factual issue related to antidumping duty assessment in favor of importing interests. The resolution of these issues -- which relate to adjustments to foreign market value on account of differences in merchandise, differences in circumstances of sale and the like -- has had a significant impact in the assessment of antidumping duties on current entries of television receivers as well as on merchandise covered by other dumping findings. Thus, the legal and factual judgments made in an attempt to justify the television settlement have caused the Commerce Department to lock itself into a position where margins of dumping in all of its other cases are being systematically understated.

The failure of the Commerce Department to assess proper antidumping duties could have important long-term consequences in the television dumping proceeding where Japanese interests have requested that the Commerce Department revoke T.D. 71-76 on the grounds that there have been no margins of dumping for two years. COMPACT has filed a suit in the Court of International Trade which challenges the premise that there have been no margins of dumping for two years. We believe that the method of calculation presently used by the Commerce Department grossly understates the true margins of dumping. Moreover, even if there had been no margins of dumping on recent entries of television receivers (which we dispute), revocation would still be inappropriate because any absence of margins would be largely attributable to other factors, including the fact that the yen has been undervalued in relation to the dollar. We have every reason to expect that the commercial behavior and pricing decisions of Japanese producers would change if the yen were to appreciate in value. No responsible decision to revoke can be made on the basis of the experience of the past two years.

COUNTERVAILING DUTY CASE

On April 3, 1970 Zenith Radio Corporation filed a countervailing duty petition with the Commissioner of Customs which, among other things, alleged that the Government of Japan's practice of remitting its commodity tax upon the exportation of consumer electronics products constituted a "bounty or grant" within the meaning of the countervailing duty law. For five years the Treasury Department refused to act on the Zenith petition. Effective January 3, 1975 Congress amended the countervailing duty law by compelling the Secretary of the Treasury to rule on such petitions within twelve months. On January 7, 1976 the Secretary of the Treasury denied Zenith's petition. The U.S. Customs Court reversed the Treasury Department's ruling, holding that the remission of the commodity tax was a bounty or grant subject to the countervailing duty law. Zenith Radio Corp. v. United States, 430 F.Supp. 242 (Cust. Ct. 1977). Thereafter, the Court of Customs and Patent Appeals overturned the Customs Court by a 3-2 majority. United States v. Zenith Radio Corp., 64 C.C.P.A. 130, 562 F.2d 1209 (CCPA 1977). The issue was finally presented to the Supreme Court which affirmed the CCPA decision. Zenith Radio Corp. v. United States, 437 U.S. 443 (1978).

The Japanese Commodity Tax is an instrumentality used by the Government of Japan for raising substantial revenue. Other governments use similar value added taxes as principal forms of revenue. Typically, value added taxes are waived or remitted upon exportation of the article taxed. The United States does not have a value added tax but relies for much of its revenue on corporate and personal income taxes. As a result of these different approaches to taxation, articles imported into this country from Japan and other important trading partners do not carry with them the substantial burden of value added taxes, yet they compete against products made in this country which have built into their costs the full burden of our country's income tax system. By the same token, goods exported from this country carry with them the full burden of our system of corporate and personal income taxation and then are subjected to the imposition of value added taxes (on a CIF basis) when they are sold in various countries of destination.

The United States is at a significant disadvantage in world trade because of the ability of our trading partners to remit so-called "indirect" value added taxes while the United States may not remit "direct" income taxes. Congressional attention to this problem is certainly long overdue.

THE COLOR TELEVISION SECTION 201 CASE

In 1976, the domestic industry and its unions filed a petition with the U.S. International Trade Commission (ITC) under section 201 of the Trade Act of 1974. That petition alleged that imports of color television receivers were causing serious injury to the domestic industry. The domestic industry and its workers were seeking a temporary respite from imports which would permit them to survive while they attempted to get long-overdue relief under the antidumping and countervailing duty law.

Following extensive hearings by the ITC, the Commissioners found that the domestic industry was being seriously injured and recommended to the President a program of import relief. After an inter-agency review, President Carter agreed that import relief was necessary and dispatched his Special Trade Representative to initiate negotiations for an orderly marketing agreement (OMA) with Japan. In the spring of 1977 an OMA was negotiated limiting imports from Japan for a period of three years.

No sooner was the OMA negotiated when it became clear that imports from Taiwan and Korea were surging, taking up the slack resulting from the OMA with Japan. Therefore, following extensive contacts with the Administration by the domestic industry, additional orderly marketing agreements were negotiated with Taiwan and Korea for two years ending June 30, 1980.

In 1980. when these OMAs were scheduled to expire, the domestic industry requested an extension of the import relief program. Once again, lengthy hearings were held by the ITC. The Commission recommended that a program of import relief continue. The President then permitted the OMA with Japan to expire, but negotiated extensions of the OMAs with Taiwan and Korea. Those agreements expired on June 30, 1982.

While the OMAs were in effect, members of the domestic industry tried to improve their competitive position vis-a-vis imports in a number of ways, including efforts to obtain the proper assessment of antidumping duties. Although the OMAs have expired, these other efforts continue.

COLOR TELEVISION SECTION 337 CASE

In 1976, GTE Sylvania Incorporated and Philco Consumer Electronics Corporation ("complainants") initiated complaints against several Japanese color television set manufacturers ("respondents") pursuant to section 337 of the Tariff Act of 1930, as amended, charging that respondents had committed certain unfair trade practices in U.S. import trade. The ITC consolidated these complaints and initiated an investigation. Respondents denied having violated section 337 of the Act. Before the Commission made any findings of fact or conclusion of law, however, the complainants, the respondents and the Commission entered into a consent order, dated July 29, 1977.

Respondents agreed to refrain both individually and/or collectively from certain stipulated unfair trade practice in the U.S. color television set market. For each year commencing in 1977, respondents agreed separately to report under oath to the Commission certain information concerning revenues, aggregate sales volumes, volume by screen size, aggregated costs, etc. The order stipulated that if the Commission had reason to believe that a violation of the consent order had occurred, it would hold a hearing and, if a violation were found, it would order the appropriate remedy. This consent order has been in effect since 1977, but there is no evidence available to suggest that the order has caused any elevation in the standards of commercial behavior of Japanese television producers in the U.S. market.

ANTITRUST LITIGATION

Zenith Radio Corporation ("Zenith") and National Union Electric Corporation ("NUE") filed suits in 1974 and 1970, respectively, alleging that certain Japanese manufacturers of consumer electronic products, including color televisions, had conspired over a period of more than 20 years to take over the U.S. consumer electronics industry and drive Zenith and NUE out of business. Zenith and NUE raised claims under the Sherman Act, the Wilson Tariff Act, the Antidumping Act of 1916, the Clayton Act, and the Robinson-Patman Act. Their actions were consolidated in the U.S. District Court for the Eastern District of Pennsylvania. Plaintiffs in essence alleged that the defendants' objective was accomplished by means of a conspiracy to charge artifically high prices to consumers in Japan which funded or "war-chested" sales in the U.S. at artifically low prices.

The court dismissed, with minor exceptions, plaintiffs' claims under the Antidumping Act of 1916. Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 494 F.Supp. 1190 (E.D.Pa. 1980), appeal docketed, No. 80-2080 (3rd Cir.). The court then granted defendants' motion for summary judgment with respect to the remaining claim. Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 513 F.Supp. 1100, 1117 (E.D.Pa. 1981), appeal docketed, No. 81-2331 (3rd Cir.). The court expressed its understanding of "Zenith's concern about the inroads by the defendants and other manufacturers of consumer electronics products in the U.S. market, and its striving to maximize its profits and preserve its workers' jobs." Id. at 1333. Nevertheless, the court urged plaintiffs to seek relief elsewhere, noting that "its proper remedy in this regard is not in the antitrust court, but in the Congress, in the U.S. International Trade Commission, and in the office of the President's Trade Negotiator." Id.

The U.S. Court of Appeals heard oral arguments on the two appeals in Zenith Radio Corp. on October 22, 1982; no decisons have yet been issued.

COLOR PICTURE TUBE IMPORTS: THE LARGEST SINGLE INPUT TO COLOR TELEVISION SETS

The color television picture tube ("CPT") is the single most expensive component used to assemble CTV's. The production of glass envelopes used to make color television picture tubes and the production of color picture tubes themselves are both highly capital-intensive activities. The cost structure at both the glass and tube levels of production is such that the underutilization of production capacity tends to drive costs upward while the utilization of full production capacity tends to have a very beneficial impact on incremental profits. The availability of excess tube capacity in Japan is the source of pressure to export CPT's.

Japanese CPT production capacity is presently estimated to be 30 million units annually with a home market demand of only 6-7 million units. Japanese companies produced approximately 24 million units in 1982. There are a number of incentives for Japanese firms to sell as many CPT's as possible in the U.S. market (either as CTV's or CPT's delivered to their U.S. captive CTV assembly operations). First, the incremental profits from additional volume are substantial as more units of production are spread over high fixed costs. Second, taking volume away from their U.S. competitors will substantially undermine the cost structure of U.S. producers. Third, European countries have pressured Japan to reduce its previously substantial exports of CPT's, thus forcing Japan to find other outlets. This, coupled with the recent addition of CPT production capacity in Korea, Taiwan and Singapore, puts great pressure on Japanese CPT producers to sell in the U.S. market.

The pressure on Japanese tube manufacturers to utilize their substantial capacity to produce tubes is evident from their behavior following the substantial reduction in CTV exports as a result of the threatened imposition of antidumping duties in 1978. No sooner had CTV exports begun to fall when CPT exports to this country began to rise. Prior to 1978 CPT imports from Japan were never substantial. This is probably because the normal duty on CPTs is 15 percent as compared to 5 percent on CTVs. However, between 1978 and 1981 exports of CPT's rose substantially as the following U.S. Department of Commerce data illustrate:

U.S. IMPORTS OF COLOR PICTURE TUBES FROM JAPAN, ANNUAL 1978-1981
(in units)

1978	261,038
1979	277,935
1980	520,645
1981	957,772

The threatened imposition of antidumping duties starting in 1978 undoubtedly contributed to this shift from CTV to CPT exports.

In 1982 imports of CPTs declined somewhat over 1981 levels but imports of CTV's helped to offset that decline. It is quite clear that the need for Japanese producers to utilize their substantial CPT production capacity will result in increased exports of CTV's if the restraint of imposition of antidumping duties is removed. By the same token, elimination of the existing 15 percent duty on CPTs would undoubtedly result in a substantial increase in imports of that product. Preservation of the 15 percent duty on CPTs and prevention of circumvention of that duty through devices such as foreign trade zones is essential to the health of the domestic industry.

* * * * * * *

In summary, individual members of the domestic color television industry and their workers have used practically every provision in the U.S. trade laws in their pursuit of relief from continued unfair trade practices by foreign producers. Despite these efforts and some successes, the industry today is still fighting the battle. The lessons learned from the color television case stimulated the 96th Congress to alter the way in which the antidumping law is administered and enforced.

EIGHT RECOMMENDATIONS

Based on our extensive experience, we feel that we are in a good position to recommend additional changes in the domestic trade laws.

1. Settlement Authority Over the Assessment of Antidumping and Countervailing Duties

One of the major reforms contained in the Trade Agreements Act of 1979 was the creation of major procedural rights for members of domestic industries and their workers in administrative assessment of antidumping duties. Those rights include the right to a hearing, to of access to confidential information subject to a protective order, and to appeal the results of the assessment determination to the U.S. Court of International Trade. Pursuant to the general compromise provisions of 19 U.S.C. § 1617 (1976), the Department of Commerce has circumvented these procedural rights in the assessment process by entering into bilateral settlement agreements with importers. We believe that the 96th Congress never intended antidumping duties to be compromised in this fashion. 19 U.S.C. § 1617 should be amended to exclude from its terms the compromise of antidumping and countervailing duties.

2. Standing To Initiate and/or Participate in Antidumping Proceedings

The Trade Agreements Act of 1979 attempted to define the term "interested party" so as to establish who would be entitled to participate in antidumping and countervailing duty proceedings. Section 771(9) of the antidumping law defines interested party manufacturers, producers and wholesalers of a "like product" as well as a "certified union, recognized union or group of workers which is representative of an industry." Unfortunately, the definition of interested party did not explicitly include labor/industry coalitions such as COMPACT which have been formed specifically to enforce the rights of producers and workers under the trade laws.

We recommend that section 771(9) be amended to eliminate any uncertainty with respect to the right of a labor/industry coalitions to initiate and participate in antidumping and countervailing duty proceedings and to encourage a flexible and lenient interpretation by the Courts. The definition of like product should also be expanded to permit participation in antidumping and countervailing duty proceedings of those associated with the production of parts and components irrevocably destined for incorporation in the imported article.

3. Adjustments to Foreign Market Value on Account of Differences in Circumstances of Sale and Differences in Merchandise

The Commerce Department has in a number of cases permitted a variety of adjustments to foreign market value on account of claimed differences in circumstances of sale and claimed differences in merchandise. We believe that many of these adjustments have caused margins of dumping to be significantly understated. For example, the antidumping law was intended to cause an additional duty to be imposed when the price in the home market is higher than the price in the export market where there have been actual sales in the home market which can serve as the basis for such a price comparison. The emphasis has always been supposed to be on differences in prices. The approach currently being used by the Commerce Department allows foreign market value to be adjusted downward on account of claimed differences in cost of production even where there is no showing that such claimed differences had any impact on the prices charged. Any businessman who has had responsibility for pricing decisions knows that cost is only one of the factors that goes into a pricing decision. In a competitive market, cost frequently has little to do with price. The original intent of the antidumping law should be restored through an amendment which prohibits adjustments on account of claimed differences in cost unless it is established that such differences in cost had, in fact, an impact on the actual market value of the article in question.

The Commerce Department is presently allowing foreign market value to be adjusted downward on account of claimed differences in circumstances of sale which are not directly related to the sales under consideration. For example, foreign producers may offer special discounts and rebates based upon the cumulative purchase of a number of different products in addition to the product which is the subject of the dumping finding. Such discounts and rebates are only indirectly related to the sales of the product covered by the dumping finding and ought to be ignored in the determination of foreign market value.

The antidumping law requires that foreign market value be determined on the basis of transactions involving the "usual wholesale quantities" which are completed "at the time of exportation" of the exported merchandise. The Commerce Department is presently allowing adjustments to foreign market value on account of discounts and rebates allowed on the cumulative purchases of merchandise over a protracted period of time, *e.g.*, additional discounts based upon annual purchases. These "after sale" discounts and rebates should not be considered in ascertaining foreign market value because the cumulated purchases to which they relate are not in the "usual wholesale quantities" nor are they contemporaneous with the export transaction for which dumping margins are being calculated.

The foregoing problems could be eliminated and the intended meaning of the antidumping law restored if the following amendment were adopted.

Section [illegible] the Tariff Act of 1930 (19 U.S.C. 1677(a)(4)) is amended [illegible] ad[illegible] following subparagraph thereto:

> 5. [illegible] No adjustment may be made to [illegible]ket value (a) for differen[illegible]umstances of sale which are no[illegible] to have an effect upon the price or market value of the merchandise under consideration, (b) for differences in circumstances of sale which are not directly related to the sales under consideration, nor (c) for cumulative discounts or rebates or other after-sale discounts or rebates.

4. The Exporters Sales Price Offset

The margin of dumping on merchandise subject to a final dumping finding is supposed to be the difference (approximately) between the foreign market value of comparable merchandise and the United States price of the exported item. The antidumping law was written to take into account the fact that there are two classes of export transactions and that the margin of dumping should not vary significantly between these classes. The first class of transaction -- the so-called Purchase Price transaction -- involves an arms' length sale by a foreign producer to an unrelated purchaser who typically buys F.O.B. foreign port and becomes the importer of record when the merchandise enters the customs territory of the United States. The second class of transaction -- the so-called Exporter's Sales Price (ESP) transaction -- involves the sale by a foreign producer to a related party in the United States. This related party then resells the merchandise to unrelated parties in this country.

If the Commerce Department were to rely on the sales price between the foreign producer and its related company in the United States, actual margins of dumping could be easily masked in this intra-company transfer. To avoid this, the law requires that the United States price be determined on the basis of the related company's first resale in this country to an unrelated purchaser -- the ESP transaction.

The antidumping law recognizes that there are certain expenses incurred by the related purchaser in the United States (overhead in this country, advertising and promotion expenses, etc.) which should be reflected in the resale price of the related company, but which are not incurred by foreign producers who sell directly from their overseas location to unrelated United States purchasers in Purchase Price transactions. In order to reduce both the Purchase Price transaction and the ESP transaction to their essential equivalents, section 772(e) of the antidumping law requires that certain downward adjustments be made in the ESP transaction price to eliminate that portion of the price which reflects the costs of doing business through related company in the United States. 19 U.S.C. § 1677a(e). The intended result of this provision is to insure that Purchase Price and ESP transactions are reduced to their essential equivalents and that the margin of dumping calculated for a foreign producer's sales into the United States will not vary between Purchase Price and ESP transactions.

The Commerce Department has adopted a policy which essentially changes this statutory scheme. The so-called "ESP Offset" rule [19 C.F.R. § 353.15(c)] permits the foreign producer to deduct from foreign market value an amount equivalent to the ESP adjustment to the United States price required by Section 772(e). The effect of this special rule is to neutralize the adjustment to United States price mandated by section 772(e) of the Act and to cause actual margins of dumping in ESP transactions to be substantially understated.

There is no authority for the ESP Offset in the antidumping law. Indeed, the ESP Offset is inconsistent with the statutory scheme created by Congress. We recommend that Section 773(a) of the Act be amended by adding the following subparagraph (in addition to subparagraph 5 recommended above).

> 6. Prohibited adjustments. No adjustment may be made to foreign market value for differences in circumstances of sale or otherwise, for indirect selling and general expenses as offsets against the adjustments specified in the definition of the United States Price set forth in Section 772(e).

5. Eliminate the presumption of administrative regularity and correctness of decisions by the administering authority

The domestic industry has long been frustrated by interpretations given to the antidumping law by the Treasury Department and now by the Commerce Department. COMPACT was shocked to learn that none of the government officials who participated in the April 28, 1980 settlement agreements bothered to consider what the implications of that settlement were for the domestic industry and its workers. While it is true the condition of a domestic industry is initially a matter for the ITC's examination in its injury investigation, nevertheless, the Commerce Department should also be required to assess the impact on the domestic industry of its actions in imposing the statutory remedy. There is no evidence to suggest that such evaluations take place. As a matter of fact, evidence in the television case suggests that the Commerce Department has no sensitivities whatsoever in this area.

A number of the statutory amendments are recommended because of specific misinterpretations of the antidumping law rendered by the Commerce Department since the Trade Agreements Act of 1979 became effective. In most cases we believe that present deficiences in the antidumping law have resulted from misinterpretations of the law by the Commerce Department rather than deficiencies in the way the law was originally written. Unfortunately, when interpretations placed upon the law by Commerce are challenged in court, great latitude is given to the Department's interpretation, and a presumption of administrative regularity attends its decisions. Accordingly, we are forced to seek Congressional amendments to the law.

We recommend that the judicial review provisions of the antidumping and countervailing duty law be amended to eliminate any presumption in favor of or against agency action.

6. Amendments to the Antidumping Act of 1916

The experience of the domestic television industry in its efforts to obtain proper enforcement of the Antidumping Act of 1921 raises considerable doubt as to whether any Executive Department agency can devote the time, effort and resources to implement the statutory remedy effectively. Additionally, federal agencies usually do not possess the expertise to implement the statutory remedy properly with respect to individual markets and products. The 1921 Act was, however, intended to supplement the private antitrust-type remedies established under the Antidumping Act of 1916. Unfortunately, the 1916 Act has never provided the kind of effective remedy originally contemplated by Congress. Since its original enactment, there has been only one reported case under that law, H. Wagner & Adler Co. v. Mali, 74 F.2d 666 (2 Cir. 1935), and we are aware of no cases under the 1916 Act, where a plaintiff has prevailed.

COMPACT believes that a workable private remedy for dumping is badly needed to supplement the public remedy under Title VII of the Tariff Act of 1930. The 1916 Act should be amended to eliminate the burdensom requirement of establishing intent to injure a U.S. industry and to eliminate the criminal penalties so as to make this a strictly private remedy. Senators Specter and Mathias both have bills designed to reform the 1916 Act pending before the Senate Judiciary Committee. COMPACT supports the concept behind these bills.

7. The Causation Test Under Section 201

We urge that the Committee consider amending section 201 to change the injury causation test. Section 201(b)(1) now requires that an article be imported into the United States in such increased quantities as to be "a substantial cause of serious injury, or the threat thereof, to the domestic industry." Section 201(b)(4) defines the term "substantial cause" to mean "a cause which is important and not less than any other cause."

This is a more difficult standard to meet than the requirements of Article XIX of the General Agreement on Tariffs and Trade (GATT), which mainly requires that imports be a cause of serious injury. There is simply no logical reason why American law should be more strict than the international law established by the GATT and agreed to by the United States government. Particularly when the United

States economy is the major target of unfair trade practices, domestic industry should not have to meet a more difficult standard than our counterparts abroad. We therefore recommend that the term "substantial" be deleted from section 201(b)(1), and that section 201(b)(4) be stricken entirely from the law.

8. The definition of "like or directly competitive"

Section 201(b)(1) of the Trade Act of 1974 provides that in order to make an affirmative determination, ITC must find that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat thereof, to the domestic industry producing an article "like or directly competitive with the imported article." 19 U.S.C. § 2251(b)(1) (1976). In *United Shoe Workers* v. *Bedell*, 506 F.2d 174 (D.C. Cir. 1974), the Court of Appeals held that the word "like" does not include a component (shoe counters) of a finished imported article (shoes). The result of this holding is that producers of component parts cannot petition for relief under section 201 on account of injury resulting from the importation of finished articles which include their components.

The present wording of section 201(b)(1) as interpreted in the *Bedell* case is unduly narrow and inflexible when applied to a number of complex industrial products, the manufacturing process for which is subdivided into the fabrication of a number of parts and subassemblies which are eventually incorporated in a completed product. In a modern industrial society there are very few products the production of which is accomplished in one straight-line manufacturing operation. The producers of major parts and components often make a major investment in R&D, capital equipment, etc., and yet are ineligible to complain about imports the sale of which deprives them of their market just as it does the producer who assembles the finished article.

Section 201 of the Trade Act of 1974 should be amended to permit companies or labor organizations associated with the production of materials, parts or subassemblies irrevocably destined for incorporation in the like or directly competitive domestic article to petition for relief.

Mr. Chairman and Members of the Subcommittee, thank you again for this opportunity to testify. We will be pleased to try to answer any questions you may have.

William H. Bywater
President, International Union
of Electrical, Radio and
Machine Workers

Francis H. Olmstead, Jr.
Vice President and General
Manager
Electrical Products Division
Corning Glass Works

Chairman Gibbons. Do we have another witness to testify? If we do we will then ask questions after that.

STATEMENT OF WILLIAM H. BYWATER, PRESIDENT, INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, AFL-CIO, REPRESENTING THE COMMITTEE TO PRESERVE AMERICAN TELEVISION (COMPACT)

Mr. Bywater. Mr. Chairman, I am William Bywater and I am president of the International Union of Electrical, Radio, and Machine Workers, AFL-CIO. Our union has a current membership of 175,000, a significant number of which are involved in the production of consumer electronic products, such as color television receivers, and related materials, parts, and components.

The severe import problems experienced by the U.S. consumer electronics industry over the past two decades, and, particularly by the U.S. color television industry, have taken a tremendous toll on the workers in the industry and on our membership.

In the past 10 years alone, the number of production workers in the color television industry has plummeted dramatically from 41,000 in 1973 to less than 18,000 by 1982, as shown by the data in the attached table. This attrition and the loss of job opportunities for American workers has been a direct result of inroads by imports into the U.S. market which have led to serious economic difficulties for the domestic color television industry.

A recent example of injury from imports is the announced closing of the Corning Glass Works plant in Bluffton, Ind. I am sure that this was a difficult and painful decision for Corning to make, but unless the flood of imports can be stopped, the prospects for changing this decision are poor.

One major cause of these import difficulties has been the systematic, widespread, unfair practice of dumping engaged in by the Japanese television industry for years. Dumping by Japan on a massive scale was well documented by the U.S. Treasury Department in response to a U.S. industry complaint brought 15 years ago. Certain members of this committee may well be familiar with the sordid history of these practices and the poor response to this problem by the U.S. Government since that time.

In addition to direct injury caused by imports, there has been another fundamental change in the domestic color television industry related to pressure from imports and unfair trade practices. This involves the offshore relocation by domestic producers of many manufacturing operations, and hence jobs. While these efforts have been, in part, an attempt to survive the import problem, most U.S.-owned domestic manufacturers have nevertheless been driven from the industry. Only 5 of the original 18 domestic color television producers in existence in 1968 remain today.

In addition to forcing jobs offshore, the import-related difficulties of the industry also have contributed to the long-time practice by certain U.S. producers of licensing technology to overseas competitors. Such practices have also been encouraged by foreign countries' barriers to U.S. exports. However, such transfers of technology have been ultimately self-defeating, since they have not only guaranteed the loss of exports to those markets receiving the technology, but they have also set the stage for increased U.S. imports from those sources.

The U.S. consumer electronics industry, which once was the world's technological leader, has long since relinquished that position. During the 1950's and 1960's, the gradual erosion of U.S. leadership was masked by the continual and rapid development of new products. However, as each new product was developed, each was rapidly taken over and dominated by imports from foreign producers. This fate befell such major consumer electronic products as radios, audio products, and monochrome television receivers.

The color television industry has until now avoided a similar demise largely through the determined actions of a coalition of labor and management, that is, Compact. Trade relief efforts brought by Compact since 1976 before all branches of the U.S. Government have forced the executive branch to recognize the serious trade problems of this domestic industry and to take meaningful steps to resolve the import problem.

Only when the U.S. Government finally negotiated temporary quantitative restrictions on imports from Japan, Taiwan, and Korea, and acted to address the longstanding dumping problem in the late 1970's, did some forward progress occur. In addition to halting increasing import penetration, these actions caused foreign producers to invest in U.S.-based production facilities. This investment, primarily by the Japanese, allowed the United States to utilize labor and domestic resources to a much greater degree than would have occurred had increasing shares of the U.S. market continued to be captured by imports.

This development, while welcome, has hardly gone as far as necessary to undo the damage done to American workers. Certainly, it has not reversed the steady loss of U.S. employment.

The history of this industry and the trade problems it confronts is a perfect example of why a tough stand must be taken and maintained by the U.S. Government to protect the legitimate economic interests of this country. The color television industry represents the last, significant remaining segment of the U.S. consumer electronics industry, an industry which has provided in the past and can continue to provide a financial and technological base necessary to keep the U.S. economy growing and competitive.

U.S. trade policy and administration have too often reflected a self-destructive, passive attitude toward the unfair practices of foreign countries, such as dumping, subsidies, industrial targeting, closed home markets, or domestic content laws. Invariably, these foreign practices hurt domestic workers and firms through increased U.S. imports, while the U.S. Government maintains a posture that refuses to recognize the inequities in the world trading system and the real and direct ways this hurts the U.S. economy.

Stronger and more direct actions by Congress are essential to show other nations of the world that we have a clear conception of our interests and the will to maintain those interests.

I want to say in closing, Mr. Chairman, I certainly appreciate the statement you made earlier that laws should be enacted and enforced rather than bargained away. That certainly is our position.

Thank you very much.

[An attachment to the statement follows:]

TABLE 1.—*Average number of production and related workers employed in the U.S. color television receiver industry, annual, 1973-81 and January-March 1982*

	Number
1973	41,434
1974	36,349
1975	27,651
1976	26,957
1977	24,976
1978	23,855
1979	22,470
1980	21,678
1981	18,751
1982:	
January	18,119
February	17,697
March	16,874

Source: U.S. International Trade Commission, publication No. 1068, May 1980, for 1973-76; U.S. International Trade Commission, "Color Television Receivers: U.S. Production, Shipments, Inventories, Exports, Employment, Man-Hours, and Prices," various quarterly issues, for 1977-82.

Chairman GIBBONS. Thank you.

As I recall, some of the changes that we made in the 1970's were in response to the kind of problems that we detected and you brought to our attention in the late 1960's and early 1970's. It appears that unfortunately while we made some changes and have made some progress, the process still lacks what I would prefer to call complete objectivity as far as the domestic interest is concerned.

I realize that your case began a long time ago and as I said, we made changes in response to the lessons that we had learned from that case but apparently from what you say our changes didn't sink through. We removed from Treasury their power to enforce these laws and administer these laws because we had given up trying to reform them. We tried in the early 1970's to reform them and got a lot of promises from them that they would change their practices. By 1979 though we had learned there was no way to reform that operation and we moved it out of Treasury and over to Commerce hoping that we would be able to clear that up.

But it is your contention that the same negotiating away of rights is taking place under Commerce as under Treasury or has there been improvement at all?

Mr. OLMSTEAD. Well, let me try to answer that question, Mr. Chairman.

Chairman GIBBONS. It is a rather vague question, I realize.

Mr. OLMSTEAD. We thought under the Trade Act of 1979 that we would be a part of and be informed of the settlement of the dumping case. The Department of Commerce found a way to circumvent that trade law with an ancient other statute. Our concern is that between 1980 and 1982 imports of sets and tubes increased 53 percent. In 1983 my personal assessment is that imports will increase another 20 percent and in many cases we think these are from countries that are dumping color television sets.

Now we will go and bring a dumping case against these countries but it will be to no avail. As I said before, unless these trade laws are amended the color television business will exit our country.

Chairman GIBBONS. You certainly have given us good specific examples that I am directing the staff to pay particular attention to when we get around to the drafting of the proposed remedies or proposed amendments to the remedies.

We want to work with you to be sure we are on target.

To go back to your case and the settlement of those cases by Commerce, I assume you knew they were trying to settle them; or did you not know that?

Mr. OLMSTEAD. Paul Cullen will comment. He is familiar with the antidumping case.

Chairman GIBBONS. Fine.

Mr. CULLEN. Thank you, Mr. Chairman.

We were not consulted at all with respect to the settlement agreements and I first learned of the settlement in the telephone call on April 28, 1980, announcing a press conference during which the settlements would be disclosed. We had no prior knowledge.

Chairman GIBBONS. You mean even though you were the litigant in the case and had the most to lose by a settlement you were not kept informed of the actions by Commerce?

Mr. CULLEN. That is correct. No information was given. Perhaps even more distressing, during the period since the settlement was executed we learned that nobody in the Treasury Department and nobody in the Commerce Department attempted to evaluate the implications of the settlement agreement on the domestic industry. One can compare the indifference and lack of attention in that regard on the part of officials of our Government with the intensity of the advocacy by the Ministry of International Trade and Industry in Japan with respect to the well-being of their industry.

The comparison is really quite remarkable.

Chairman GIBBONS. I am going to ask you to get off into the speculative area—why weren't you informed? If they were getting ready to settle your case, why weren't you informed?

Mr. CULLEN. Well——

Chairman GIBBONS. You are giving me the impression that they deliberately set out to settle the case without consulting with you at all. Do you know why they did that?

Mr. CULLEN. There is some indication that the Commerce Department was concerned that the members of the domestic industry and its workers would attempt to assert rights given to them under the 1979 act and I think that the Government officials believed that our attempted assertion of those rights would be inconvenient and might impair the settlement prospects.

Chairman GIBBONS. I see.

Mr. CULLEN. The 1979 act gave elaborate procedural rights for the industry to participate in the assessment process.

Chairman GIBBONS. I know.

Mr. CULLEN. And to me if you are going to settle a case you want to make all of the interested parties a part—involve them in the agreement.

Chairman GIBBONS. That is the basic ingredient of Anglo-Saxon jurisprudence as I recall from my fundamental teachings in those areas.

It is so appalling to me. Well, I will ask why they didn't consult with you. I regret to understand that they didn't.

Mr. HARTQUIST. Mr. Chairman, may I interject on that.

I am David Hartquist of Collier Shannon and we have worked, Paul Cullen and I have worked together over the years.

It may be of interest to the committee to know that this settlement procedure developed back in 1977 under a previous administration.

When we were over in Tokyo assisting the government while it negotiated an orderly marketing agreement following the escape clause case which the television industry won, what the domestic industry got, as part of a tradeoff, was what we euphemistically refer to as a secret side agreement. According to the Government of Japan, our Government representatives agreed with the Japanese representatives that, as a quid pro quo for the orderly marketing agreements, no further duties would be assessed. We think that one of the reasons we were never consulted was there was no intention to enlighten the domestic industry that while on the one hand they were trying to help us with orderly marketing agreements, on the other hand they had made an off-the-record arrangement with the Japanese to scuttle the antidumping case.

That whose issue remains in litigation right now. We have a decision coming down in the next few weeks on this whole issue.

Chairman GIBBONS. I hope you win. I hope it makes the issue moot because, one, I am appalled by secret side agreements or any kind of secret agreements in which all the parties are not informed of their rights and responsibilities and liabilities.

And two, I just don't believe we ought to go around negotiating settlements in all these cases. I believe where the law has found injury and it is measurable, the victim of that is entitled to get direct relief from the injury.

I don't really understand that we are passing laws or that we should pass laws in which an unfair and illegal practice can take place, and then it can be bargained away for someone else's benefit.

To me, that is just repulsive.

Mr. COATS. Mr. Chairman, if I could just add something there. I think that there is a pattern of this kind of thing happening because as part of the broader picture of foreign diplomatic negotiation on matters that have nothing to do with our industrial production, the countries involved in the negotiation know that there are a bunch of collateral things, bargaining chips as it were, in a basket down here that they can get those settled in return for some type of agreement on a much broader diplomatic issue. This happened with the Camp David accords and I think it has happened with many international diplomatic negotiations.

A specific case, again, in my district occurred when a memorandum of agreement was assigned in the Camp David negotiations which specifically referenced production of defense equipment in the nation of Israel and it was only years later that we realized the adverse impact of that on a domestic manufacturer of that same product. That was not made public at the time of the negotiation. It as a secret memorandum of agreement which only surfaced several years later.

The plant was closed, or is going to be closed, the production was stopped in the United States. So I think that there is more than just this particular case involved here and those laws are circumvented by the executive branch, which is not the intent of Congress when it writes the laws.

Chairman GIBBONS. Certainly not mine. I will try to see that we make it very clear this should not take place and that if it does in the future you have an appropriate remedy in the court system for righting it.

Mr. CULLEN. If I might add one additional comment, Mr. Chairman. We in Compact believe there were several hundred million dollars worth of dumping duties which ought to have been collected. In order to compromise our case, it was incumbent upon the Commerce Department to lower the amount of duties to a level (a) that the Japanese would agree to, and (b) that they could somehow justify politically.

In order to lower that number, they had to decide virtually every legal and factual issue involved in the assessment calculation against us. When they did that, it established a precedent with respect to the ascertainment of duties on current entries so that we believe the margins of dumping on all the sets coming in now are substantially understated because of incorrect legal decisions made for pragmatic reasons during the settlement.

But worse than that, these decisions have rippled through the entire administration of the antidumping law at the Commerce Department and other cases, affecting other industries and other workers, they are being adversely impacted by these very unfortunate legal precedents. These precedents include the ESP offset and other adjustments for circumstances of sale and was not discussed in our written testimony, and some attention must be given that.

Chairman GIBBONS. Does your testimony include reference to that?

Mr. CULLEN. Reference to the individual legal issues, yes.

Chairman GIBBONS. Also reference to the fact that it has polluted, so to speak, the other decisions and other cases? It is interesting, I think that is an important point.

Mr. CULLEN. It is, and we would be happy to document this to your staff in detail.

Chairman GIBBONS. That would be helpful for us to understand that. I remember the old law school maxim, bad cases make bad law and bad settlements of bad cases make probably even worse law. We have to live with that.

Mr. CULLEN. It is particularly frustrating because when we attempt to change these decisions in court the Commerce Department goes into court with a presumption of correctness and a presumption of administrative regularity. One of our recommendations is that that presumption in this type of case be set aside and let them go in like any litigant.

In cases like dumping and countervailing duties that are so susceptible to political pressure because of irrelevant considerations under foreign policy and what not, there should be no presumption of regularity. These legal judgments can be manipualted in order to achieve objectives that Congress simply didn't have in mind when the law was enacted.

Chairman GIBBONS. I realize there will be people that will disagree with what I am about to say, but one of my objectives is to remove our remedy laws from the types of other influences that they receive. Political, diplomatic types of decisions that are made is what I mean.

I believe the only solution to our long-range problems is to live under law rather than to live under negotiation in this area. I have taken up a lot of time.

Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I would like to thank you, gentlemen, for your testimony and your presentation. I often used the television experience as a classic example of some of our problems in the trade area, but I especially am appreciative of your testimony because I didn't realize we were still serving American industry water from that poisoned well, as you might say.

It is something we will have to look into.

I am concerned with targeting and I think that you are perhaps a classic example of targeting. I appreciate the remedies you have offered. Do you have any other thoughts in the realm of targeting which you might offer for our consideration?

Mr. CULLEN. I have given a little bit of thought to that problem in the last few days. The television industry certainly was targeted 10 or 12 years ago, although at this point I don't think that any active efforts on the part of the Government of Japan are any longer needed. They have moved on to fiber optics and semiconductors and computers.

The U.S. market is the largest and most lucrative market in the world for these targeted products. Perhaps our best defense is to tell people who are targeting our industries that their participation in this market can only come if they agree to live by the rules that we live by and if there is reciprocal access for our industries in their market. That is a very powerful weapon. It is a very powerful economic circumstance which ought to be used to our advantage.

If they want to help their industries and target their industries, fine, that is their judgment to make. But we are not going to allow them to come into our market and prejudice our companies if they take unfair advantage of us.

Mr. SCHULZE. Had the Japanese market been open to our television, you would not be here today.

Mr. CULLEN. That is correct, absolutely correct. The television picture tube was an invention developed by RCA and Corning Glass Works, the combined technologies made it possible. The only way that Corning could benefit from that technology in Japan was to license it. They were never permitted an equity position in the television industry. I am sure that is so of other companies as well. That certainly is true in some of the newer technologies.

Mr. SCHULZE. Do you have any knowledge of how much involvement the State Department had in the negotiations?

Mr. CULLEN. I prefer not to answer that question because I can't sort out in my mind right now what the source of some of my information is and some of the information is subject to protective order in the litigation. So I can only—rather than take a chance on saying something that I shouldn't, if I can give you an indication later after refreshing my memory, I will.

Mr. SCHULZE. It seems to me I see the hand of the State Department involved in this whole thing. That concerns me and I imagine that that is what the chairman was alluding to when he spoke of straightforward settlements and what not. I realize, I hope it is not too late to preserve some of the domestic television industry.

I think it is a classic example, as I said before, and I know that even some of our domestic producers have attempted to head-on compete and had very, very difficult times doing so. It is symbolic of what will happen to our high tech if we are not very much aware of it and take steps to see that it doesn't happen in the future.

I thank you, gentlemen. Thank you very much.

Chairman **GIBBONS**. Thank you. Mr. Pease.

Mr. **PEASE**. Thank you, Mr. Chairman. I am glad to have the testimony of our colleague and of the witnesses. I must say I am really puzzled. It appears to me from what you say that the U.S. Government does not tilt in the direction of American firms who are having difficulties as a result of foreign firms dumping in this country. The U.S. Government does not maintain neutrality. Are you saying the U.S. Government is against you? Do I read you right; is that what you are saying?

Mr. **BYWATER**. That is correct.

Mr. **OLMSTEAD**. Yes, sir.

Mr. **PEASE**. Is that true over several administrations or over a single administration? Does it vary from administration to administration?

Mr. **BYWATER**. No.

Mr. **OLMSTEAD**. My guess to that is that as we indicated in our testimony the ITC said that the Japanese were dumping sets back in 1971, I believe, and it is now 1983, and we feel that they are still dumping. We feel there is dumping from other countries. We have no recourse under existing laws because we find that somehow our Commerce Department—initially Treasury, now Commerce—finds a way to get around the trade laws. We, like you, are frustrated and appalled.

Mr. **PEASE**. Can you conjecture at all on why it is that Treasury and the Commerce Department would take this attitude?

Mr. **OLMSTEAD**. I think that question was, in a sense, asked before and Mr. Cullen tried to answer it. I think that Congressman Coats answered it. I think—this is my own speculation—in the hierarchy of priorities Commerce, in our country, might not be number one. Perhaps the State Department and our Defense Department have more to say about the importance of foreign countries that are taking an opportunity their product into ours.

Mr. **PEASE**. You have made several suggestions for changing the law. How much of this problem is the law, inadequacies of the law, and how much of it is administration of the law? In other words, if we were to change the law in the manner that you suggest, would the Commerce Department and the ITC still be willing to subvert the intent of the law?

Mr. **CULLEN**. If I could address that, I thought many of the reforms in the Trade Agreements Act of 1979 would solve our problems and I worked very hard, as did others around this table, to promote those amendments.

Who could anticipate that all of the procedural safeguards that we worked to get into the law would be circumvented by resort to a statute that had been enacted originally in 1922 (19 U.S.C. 1617) and that had never been used in a dumping case. That statute was intended as a measure to protect the revenues of the Treasury. Certainly it was not intended to be a provision that is would be applicable in a regulatory setting like the antidumping law, where what you are doing is not trying to collect revenues for the Treasury but you are trying to eliminate an unfair trade practice. Who could have foreseen that?

That is one of the reasons why we talk about this presumption of administrative regularity and what not. The mind of man can conceive of many ways to circumvent the good works of this Congress. My difficulty is that I don't see a will to enforce the law. If the Treasury or the Commerce Department approached the antidumping law with the same enthusiasm that the SEC approached its mandate or the Federal Trade Commission approaches its mandate, we wouldn't have dumping.

Mr. **Bywater**. May I, Mr. Chairman, say something? I would like to give you an example of what we actually experienced, what my union went through. We had a plant, the Emerson Electric plant in Jersey City. They had over a thousand workers, and the company started to hire. We said to the company, "Let's get together and see whether or not we can hire the hard-core unemployed from the Jersey City area."

They hired over 200. Most all of them worked out really well. They were employed there for almost 2 years. They had the problem with the Japanese dumping, and they told us they had a serious problem and it may be so serious they may have to lay off, and they are even fearful they might have to close the plant. Unfortunately, that is exactly what took place. They closed the plant down.

We lost 1,200 workers in Jersey City. After they closed the plant down, we made a study to find out what happened to those workers after they were laid off. Well, most of them were already in their fifties. They practically all wound up on relief rolls in Jersey City.

So all it did was defeat the company, the company gave up, they went to Taiwan, they had had enough of it all, they felt they were being harassed and they were just forced to make a decision that they felt would be to save their own company. Here it is now over 15 years later, and there hasn't been a remedy.

The remedy has been, in effect, to turn over the market to the Japanese. They have almost wiped us out now. What we are doing is pleading just to protect what we have left of that industry. That should have been an industry that should have expanded. We should have not only 40,000—we are talking about 40,000 a few years ago—we should have over 100,000 workers now employed, gainfully employed in the TV industry. We don't have it.

What we are pleading with you now, Mr. Chairman, and Mr. Pease—and I realize your statement apparently indicates your sympathy with us which I greatly appreciate—is at least save the 18,000 we have left. That is what it amounts to.

Mr. **Pease**. In your opinion is the cost of filing complaints, the legal costs of filing complaints an impediment to companies which are injured by dumping?

Mr. **Olmstead**. I think that is a consideration, as I indicated. One of our recommendations was that a coalition might have standing as a remedy. In some cases I can see where, if a labor union or a company by itself wanted to try a case or bring a dumping case or what have you, it would be very costly. A coalition of the same interested unions and of the same interested manufacturers; that allows more flexibility in that area.

Mr. **Pease**. One final question. Tell me a bit more about Compact. I heard last night from an expert on the Japanese industrial system that it is not MITI from the top that does the targeting but it's groups of firms within an industry from the bottom which seek the status that MITI can confer on them.

One thing that struck us as we discussed it last night was the problems with our antitrust laws which would develop if a similar effort were made in the United States. Have you experienced any difficulty at all with the antitrust laws in this Compact organization of yours?

Mr. **Cullen**. Compact has not attempted to seek remedies under the antitrust laws. Zenith Radio Corp. has, and that question might profitably be directed to them. But we have not sought relief under the antitrust laws.

Mr. **Pease**. I am not thinking of that, I am wondering whether the fact that you worked together as an industry, more than one country has subjected you to possible liability under the antitrust laws?

Mr. **Cullen**. The work of Compact is directed at seeking remedies under U.S. law before Federal agencies and petitioning our Congress for relief, and I think those activities are protected by the first amendment. Compact does not have any commercial activities at all, or attempt to work on commercial matters as between companies and unions, so we don't perceive any difficulties for ourselves under the antitrust laws.

Mr. **Hartquist**. If I can supplement that, Congressman. There is a doctrine called the Noerr-Pennington doctrine, which protects groups of competitors who want to join to petition the Government, whether it is in an unfair trade practice case or in some other area.

But I will comment that in my experience as an attorney we have had a number of circumstances where the Justice Department, for example, has appeared before the ITC and rattled its chains about the fact that competitors are joining together to bring a case under the antidumping laws, which is clearly warranted under legislation this committee has worked on many years.

So, needless to say, we get a little concerned when our own Government on the one hand is accepting these cases and on the other hand is rattling its chains about the antitrust laws. We have never had any specific problems or specific complaints, just some kind of vague warnings on occasion on this issue.

Mr. **Pease**. Well, that is what I was trying to get at. It seems to me that the kind of joint effort that you are talking about in your industry could be emulated in our industries and add some strength and coordination to those efforts. But if the Justice Department is going to rattle the chains every time that happens, as you say, it must have a chilling effect on efforts to get together.

Thank you, Mr. Chairman.

Chairman **Gibbons**. I think certainly we didn't intend to exclude associations such as Compact from taking actions and being parties in a case, and I am sorry the law has been interpreted that way. I think it ought to be corrected to make clear that you should have standing to bring an action specifically.

It was never our intention to prevent people with a like point of view, and particularly labor and management, to get together and protect their own interests in any matter. I regret to hear that the law has been interpreted the other way. I think it is one of the things we ought to remedy.

Mr. COATS. Mr. Chairman, if I could make a final point. I know I am running the risk of being repetitious——

Chairman GIBBONS. No, go ahead.

Mr. COATS. I think it is very important that these gentlemen are not before the panel asking for you to erect trade barriers or walls. They are simply saying we recognize that we live in an international world and that there are benefits to the United States from exporting and selling overseas. All we are asking is that we be able to compete on an equal basis and on a fair basis, not that some unfair barriers be raised.

I am going to be introducing legislation addressing a number of these areas that we have talked about. I am encouraged by the panel's positive responses, and I don't presume to be the expert in this area. But I would ask the chairman and those on the panel if you would be willing to work along with me and your staff so that we can introduce the correct legislation and hopefully get it enacted very quickly.

Chairman GIBBONS. Well, you know, I would certainly like to work with people like-minded, like you, and do something positive. Let me caution you, one of the problems we will have is that any bill that gets loose in this environment that we are now living in becomes a target for people who want to take all kinds of free rides on its back, and not only here in the House but in the Senate.

If we can take a bill and bring out a constructive piece of legislation, I would support it, but if it becomes something that is a logrolling operation I would have to turn on my own product. That is the thing that concerns me. Obviously in this area the law has not been interpreted as I remember its intent, and there should be a remedy.

I would like to get it out fast, but I hope you have seen what happens. We send these things to the Senate and, good Lord, they load everything on its back. We had a terrible time last year getting simple little bills through the Congress whenever justification for them existed. The senators, with no rules of comity or germaneness, loaded everything on them and broke the backs of just not our bills but the rights of other Americans to have a remedy in their government. That propensity in the Senate and to some extent in the House really inhibits enactment of legislation to seek remedies.

I guess I am preparing for a battle I know will come with the Senate a little later on this year. But I want to lay the predicate right out there now, if the Senate lays everything on our bills, the good ones we send over there, they won't go with my blessing.

Mr. COATS. Perhaps, Mr. Chairman, we need to establish some type of reciprocity agreement with the Senate.

Chairman **Gibbons**. We have one but it is only a one-way street, the way it works now.

Thank you very much for coming.

We next have a panel of witnesses; representing the American Iron & Steel Institute, Robert B. Peabody, president; Specialty Steel Industry of the United States, Dr. Lena; United Steelworkers of America, John Sheehan; and Stainless Steel Wire Industry of the United States, William Pendleton.

Let's start with this very interesting panel. We will go as you are listed on the agenda. First, to the American Iron and Steel Institute, Robert Peabody.

STATEMENT OF ROBERT B. PEABODY, PRESIDENT, AMERICAN IRON & STEEL INSTITUTE

Mr. **Peabody**. Thank you, Mr. Chairman. I am Robert Peabody, president of the American Iron & Steel Institute, a nonprofit organization whose membership includes 63 domestic companies which account for approximately 90 percent of the raw steel production capability in our country.

I appreciate this opportunity to present our views on the effectiveness of our Nation's unfair trade laws.

I think it is fair to say that the American steel industry, at a cost of many millions of dollars, has had more experience than any other industry over the past several years in attempting to utilize the trade law remedies provided by Congress. Yet there has been a failure of the Government to deal effectively with unfair traded steel imports.

Candidly, I think the essential defect is not in the laws themselves but in the lack of political will over the last 20 years or so on the part of successive Government officials charged with enforcing those laws.

However, the laws themselves do need substantial strengthening, and I will comment on possible improvements in a minute. First, with respect to lack of political will, I would make the following observations:

The enthusiasm of our government to deal effectively with unfair trade practices is almost always tempered by diplomatic, political, defense, foreign investment, and other concerns. The current quite legitimate concern over the ability of some of our trading partners to service their international debt is the latest example of policy pressures on the objective enforcement of our unfair trade laws.

In addition to these other concerns, and unrelated to the merits of an unfair trade practice case, key officials in successive administrations have apparently been philosophicaly opposed to virtually any restriction on imports, however clear and compelling might be the evidence of unfair trade practices and injury therefrom and however clear the congressional mandate to act.

Relief from unfair trade practices is something that is explicitly provided for by international agreement among all the major trading nations of the world and has been provided for by Congress in domestic laws dating back many decades. I think there is an unfortunate tendency today to overlook the important distinction between actions to deal with well-recognized unfair trade practices and actions to restrict imports where there has been no demonstration of the existence of such unfair trade practices. The legitimate exercise of the unfair trade remedies provided in our law should not be stigmatized as "protectionism," because it is not.

The nature of the unfair trade practices of dumping and subsidization and the economic and legal reasons why Congress has provided remedies for these practices are well known. The antidumping and countervailing duty laws, however, were not designed to deal with many of the unfair trade practices that we are experiencing today. We do not have, today, relatively isolated instances of dumping or subsidization.

What many American industries—and particularly the steel industry—are experiencing is dumping and subsidization on a massive scale, across a broad range of products and from many countries, accompanied by devastating structural problems such as targeting and exchange rate distortions.

American steel companies must thus compete in the American market with foreign governments, instrumentalities of foreign governments and corporations that receive beneficial "guidance" from their governments.

These elements, namely, the tendency of our Government to deny effective trade relief because of other interests with foreign governments, the philosophical disinclination to follow the mandate of Congress under the trade laws, and the existence of structural practices that the trade laws were not designed to deal with, have coalesced to result in a massive failure over many years to deal effectively with unfair trade practices.

This failure has contributed substantially to the present debilitated state of America's basic industries and, particularly, the domestic steel industry. I do not mean to imply that the management of companies including those in the steel industry, have been free of any responsibility. The Government attitude to trade policy, as I have described it, has been a substantial cause—particularly so when added to the government policies reflected in our inadequate capital formation system and excessive regulatory burdens.

I am going to make an assertion that I feel very strongly about: namely, that the fundamental defect in our unfair trade laws is that the executive branch and the International Trade Commission have too much discretion. At virtually every step of the unfair trade administrative process, there is substantial discretion available to the decisionmakers.

Cumulatively, this means that the decisionmakers can decide unfair trade cases virtually any way they want to. Since they frequently have philosophical and political reasons for not wanting to provide effective relief, they don't. The decisionmakers look at each situation in isolation; they fail to see that the cumulative effect of negative determinations is the devastation of America's basic industry.

Therefore, I urge the Congress to amend the trade laws to provide more clearly that unfair trade cases are to be decided solely on the basis of economic criteria and to define more precisely those criteria. Our trade laws are part of the competition laws of the United States, and as such they should be enforced in a nonpolitical fashion.

It is ironic that some people who feel strongly about domestic competition laws being enforced with respect to domestic commerce seem to be perfectly willing to ignore U.S. law and international agreements applicable to international commerce.

It is therefore necessary for Congress to be more explicit about the economic criteria applicable at every step in the unfair trade administrative process. This is a difficult but not an impossible job. As I mentioned, Attachment 1 to my statement provides some examples of the type of trade law reforms that we believe ought to be considered.

We are working on a more comprehensive set of proposals. Among other things, they would clarify the nature of unfair trade practices and provide more reliable guidance both to prospective domestic petitioners and to our trading partners.

They would have the further beneficial effect of making costly appeals to the Court of International Trade less likely. At present, ambiguities in the trade laws virtually ensure that adversely affected petitioners and respondents will take appeals to the Court of International Trade.

However, I don't think that this alone will do the job of providing effective relief from unfair trade practices. Two more things are necessary:

First, the executive branch and the International Trade Commission must recognize that it is proper, right and essential that the trade laws be enforced as Congress intends. Congress can be of great help to this end by making its will clear in explicit legislation, in pointed report language and in a variety of contacts with executive branch and ITC officials.

Second, I urge the Congress to consider new remedies to deal with such devastating structural practices as industrial targeting, exchange rate distortions, and dumping and subsidization on such a massive scale that many domestic industries simply do not have the resources to seek redress. I do not have a proposal to make to you today about this. However, we and other industries are giving a great deal of thought to these structural practices. We would hope the subcommittee and its staff could do the same.

Finally, although these hearings are specifically focused on the administration of the trade laws, it is important to understand that these problems also relate to the work of your full committee in establishing our capital formation policies. Steel and other basic industries in this country are faced with massive capital requirements to maintain a strong, modernized and competitive industrial base.

In the case of the steel industry, a large measure of our current capital shortfall is attributable to the cumulative effect of years of lost sales and price suppression at the hands of unfairly traded imports. We need to address this reality both in the context of more effective trade laws and with more competitive capital formation policies.

Also necessary are a less burdensome regulatory system and a merger policy that takes into account foreign competition in this market. The steel industry is engaged in significant self-help efforts, but the changes in government policies that I mentioned are also essential. All this is described in our white paper, a copy of which is attachment 2 to my statement.

I thank you for the opportunity of appearing before you today, and I will attempt to answer any questions you may have.

Chairman GIBBONS. Thank you, Mr. Peabody.

[The prepared statement follows:]

STATEMENT OF ROBERT B. PEABODY, PRESIDENT, AMERICAN IRON & STEEL INSTITUTE

My name is Robert B. Peabody. I am the President of the American Iron and Steel Insitute. AISI is a non-profit organization whose membership includes sixty-three domestic companies which account for approximately 90 percent of the raw steel production capability in our country.

I appreciate this opportunity to present our views on the effectiveness of our nation's unfair trade laws.

I think it is fair to say that the American steel industry has had more experience than any other industry over the past several years in attempting to utilize the trade law remedies provided by Congress. The industry has spent many millions of dollars in the past several years in repeated good faith attempts to avail itself of these remedies. In spite of these efforts there has been a massive failure on the part of the U.S. government to deal effectively with unfairly traded steel imports over a period of many years.

Candidly, I believe the essential defect is not in the laws themselves but in the lack of political will, over the last twenty years or so, on the part of successive government officials charged with enforcing those laws. Congress has provided a substantial array of laws to deal with unfair trade practices and has amended those laws with some regularity to improve them and to conform them to international agreements. The laws themselves need substantial strengthening, and I will comment on possible improvements in a minute, but I must point my finger at the administration of the laws as the essential reason why they have consistently failed to deal effectively with unfairly traded steel imports.

Our government has a range of foreign affairs interests and concerns relating to each foreign government that is the target of an unfair trade case. Thus, the enthusiasm of our government to deal effectively with unfair trade practices is almost always tempered by diplomatic, political, defense, foreign investment, and other concerns. The current quite legitimate concern over the ability of some of our trading partners to service their international debt is the latest example of policy pressures on the objective enforcement of our unfair trade laws. In addition to these other concerns, and unrelated to the merits of an unfair trade practice case, key officials in successive administrations have apparently been philosophically opposed to virtually any restriction on imports, however clear and compelling might be the evidence of unfair trade practices and injury therefrom and however clear the Congressional mandate to act.

Relief from unfair trade practices is something that is explictly provided for by international agreement among all the major trading nations of the world and has been provided for by Congress in domestic laws dating back many decades. I think there is an unfortunate tendency today to overlook the important distinction between actions to deal with well recognized unfair trade practices and actions to restrict imports where there has been no demonstration of the existence of such unfair trade practices. The legitimate exercise of the unfair trade remedies provided in our law should not be stigmatized as "protectionism."

The nature of the unfair trade practices of dumping and subsidization and the economic and legal reasons why Congress has provided remedies for these practices are well known. The antidumping and countervailing duty laws, however, were not designed to deal with many of the unfair trade practices that we are experiencing today. We do not have, today, relatively isolated instances of dumping or subsidization. What many American industries (and particularly the steel industry) are experiencing is dumping and subsidization on a massive scale, across a broad range of products and from many countries, accompanied by devastating structural problems such as targetting and exchange rate distortions. Further, the foreign governments involved frequently are not primarily interested in whether or not their products enjoy a comparative advantage in the United States market; they are instead pursuing social policies such as the maintenance of employment, the generation of foreign exchange, the improvement of trade balances, the establishment and enhancement of selected domestic industries, the enhancement of international prestige, and a variety of other motivations unrelated to economic efficiency and comparative advantage.

American steel companies must thus compete in the American market with foreign governments, instrumentalities of foreign governments and corporations that receive beneficial "guidance" from their governments. In short, differing economic systems are competing in the United States, with serious injury to American firms by virtue of the unfair tactics engaged in by their foreign competitors. This is a problem of major scope.

These elements, namely, the tendency of our government to deny effective trade relief because of other interests with foreign governments, the philosophical disinclination to follow the mandate of Congress under the trade laws, and the existence of structural practices that the trade laws were not designed to deal with, have coalesced to result in a massive failure over many years to deal effectively with unfair trade practices.

This failure has contributed substantially to the present debilitated state of America's basic industries and, particularly, the domestic steel industry. The very lifeblood of our basic industries has been gradually sapped by the continued effects of unchecked unfair trade practices. I do not mean to imply that the management of companies, including those in the steel industry, have been free of any responsibility. I do mean to say, however, that the government attitude to trade policy, as I have described it, has been a substantial cause - particularly so when added to the government policies reflected in our inadequate capital formation system and excessive regulatory burdens.

It is important to buttress these general statements with some greater specificity. To that end some examples, and they are just examples, of specific trade law failures experienced by the steel industry, along with suggested changes in the law to deal with the failures, are provided in Attachment 1 to my statement.

Having described the unhappy experience of one industry with the trade laws, I will now speak to what might be done to remedy the situation.

I am going to make an assertion that I feel very strongly about: namely, that the fundamental defect in our unfair trade laws is that the Executive Branch and the International Trade Commission have too much discretion. At virtually every step of the unfair trade administrative process, there is substantial discretion available to the decisionmakers. Cumulatively, this means that the decisionmakers can decide unfair trade cases virtually any way they want to. Since they frequently have philosophical and political reasons for not wanting to provide effective relief, they don't. The decisionmakers look at each situation in isolation; they fail to see that the cumulative effect of negative determinations is the devastation of America's basic industries.

Therefore, I urge the Congress to amend the trade laws to provide more clearly that unfair trade cases are to be decided solely on the basis of economic criteria and to define more precisely those criteria. Our trade laws are part of the competition laws of the United States, and as such they should be enforced in a non-political fashion. It is ironic that some people who feel strongly about domestic competition laws being enforced with respect to domestic commerce seem to be perfectly willing to ignore U.S. law and international agreements applicable to international commerce.

It is therefore necessary for Congress to be more explicit about the economic criteria applicable at every step in the unfair trade administrative process. This is a difficult but not an impossible job. As I mentioned, Attachment 1 to my statement provides some examples of the type of trade law reforms that we believe ought to be considered. We are working on a more comprehensive set of proposals. Among other things, they would clarify the nature of unfair trade practices and provide more reliable guidance both to prospective domestic petitioners and to our trading partners. They would have the further beneficial effect of making costly appeals to the Court of International Trade less likely. At present, ambiguities in the trade laws virtually ensure that adversely affected petitioners and respondents will take appeals to the Court of International Trade.

Although I believe it is essential that the trade laws be amended along the lines 1 have suggested, I must reluctantly say that I don't think that this alone will do the job of providing effective relief from unfair trade practices. Two more things are necessary:

First, the Executive Branch and the International Trade Commission must recognize that it is proper, right and essential that the trade laws be enforced as Congress intends. Congress can be of great help to this end by making its will clear in explicit legislation, in pointed report language and in a variety of contacts with Executive Branch and ITC officials.

Second, I urge the Congress to consider new remedies to deal with such devastating structural practices as industrial targetting, exchange rate distortions, and dumping and subsidization on such a massive scale that many domestic industries simply do not have the resources to seek redress. These structural practices must be promptly and effectively dealt with if we intend to preserve the international competitiveness of our economic system. We must develop entirely new approaches and remedies tailored to respond to these extraordinary structural practices. I do not have a proposal to make to you today about this. However, we and other industries are giving a great deal of thought to these structural practices. I would urge the Subcommittee and its staff to do the same.

Our economic and political systems have worked together to give us the greatest amount of economic and political freedom the world has ever known. Now, our economic system is under attack by those based in different economic systems. This attack is no less devastating because it is sophisticated, multifaceted and diffuse or because it is on a sector-by-sector basis. Nor should the attack be of any less concern to us because in most cases the foreign actors involved are merely pursuing their commercial advantage or national interest and do not have a specific intent to harm our market system. The harm nonetheless results. This problem will not abate of its own accord — indeed, it is increasing. We must devise effective ways to deter or offset the effects of unfair trade and structural practices, and we must muster the will to apply them.

Finally, although these hearings are specifically focused on the administration of the trade laws, it is important to understand that these problems also relate to the work of your full committee in establishing our capital formation policies. Steel and other basic industries in this country are faced with massive capital requirements to maintain a strong, modernized and competitive industrial base. In the case of the steel industry, a large measure of our current capital shortfall is attributable to the cumulative effect of years of lost sales and price suppression at the hands of unfairly traded imports. We need to address this reality both in the context of more effective trade laws and with more competitive capital formation policies. Also necessary are a less burdensome regulatory system and a merger policy that takes into account foreign competition in this market. The steel industry is engaged in significant self-help efforts, but the changes in government policies that I mentioned are also essential. All this is described in our White Paper, a copy of which is Attachment 2 to my statement.

I thank you for the opportunity of appearing before you today, and I will attempt to answer any questions you may have.

ATTACHMENT 1

Examples of Steel Industry Problems With Unfair Trade Statutes and Suggested Remedies

Problem Experienced

The cost of preparing and prosecuting unfair trade petitions is enormous. The financial burden and diversion of management time is particularly severe for smaller companies.

Suggested Remedy

Congress should reemphasize its intention, expressed in connection with the Trade Agreements Act of 1979, that only a modest amount of evidence need be presented to the Commerce Department in order for an investigation to be initiated. Further, it should be made clear that it is Congress' intention that the Commerce Department should take the initiative in vigorously investigating the allegations contained in a petition and gathering data in connection therewith. Also, the shifting of the evidentiary burden to the party possessing information necessary to prove or disprove a particular allegation once a *prima facie* case has been made would significantly reduce costs.

Problem Experienced

In an investigation involving galvanized sheet steel from the European Community, a majority of the commissioners on the ITC made a negative determination by looking solely at three years' annualized data. The dissenting commissioners reached the opposite conclusion by focusing on the most recent quarterly data. The majority ruling results in delays in the filing of meritorious petitions. It is also unfair that domestic industries must wait until injury is reflected in annualized data.

Suggested Remedy

The ITC should be directed to look at all relevant data, including current data, annualized medium-term data and long-term data when making injury determinations.

Problem Experienced

In cases involving UK and West German steel producers, the Commerce Department identified significant subsidies being provided to UK and West German coal producers but ruled that these were not countervailable. The ruling was based on narrow interpretations of such terms as "arm's length" relationships and subsidies being made "generally available". Failure to consider the benefits to foreign steel producers of purchasing subsidized inputs is a major loophole in the countervailing duty law.

Suggested Remedy

Congress should redefine "subsidy" to close this loophole.

Problem Experienced

In connection with cases against certain French and Belgian steel companies, Commerce ruled that these producers would be subject to retroactive suspension of liquidation due to a finding of "critical circumstances" related to surges of subsidized imports from these countries. Unfortunately, the finding came too late to serve as an effective deterrent and had no effect with respect to the imports which had already cleared U.S. Customs.

Suggested Remedy

The antidumping and countervailing duty laws should be amended to mandate prompt action on critical circumstances allegations.

Problem Experienced

In countervailing duty cases against the European Community, the Commerce Department found final subsidy margins considerably smaller than the preliminary ones. It appears that Commerce used questionable valuation methodologies in arriving at its final margins. For example, Commerce refused to evaluate the credit worthiness of the foreign companies involved or how these companies would have secured financing absent government subsidization. In lieu thereof, Commerce used a cost of capital based on government bond rates in the secondary market. Moreover, Commerce ruled that subsidies granted to cover operating costs must be amortized entirely in the year of the grant and not amortized over time as are capital grants. This practice significantly understates the true cost of capital to the foreign firms.

Suggested Remedy

Congress should mandate valuation methodologies that more closely reflect economic reality.

ATTACHMENT 2

The American Steel Industry's Problems: Severe But Solvable

A Position and Policy Paper

February 1983

- * The American steel industry is in dire straits.
- * The causes of today's crisis conditions in steel are clearly identifiable.
- * Steps have already been taken toward slowing steel's hemorrhaging.
- * Despite corrective actions already taken, more are needed—now!

The American Steel Industry's Problems: Severe But Solvable

Although American steel companies spent many billions to modernize and improve facilities over the past decade, profitability remained unsatisfactory. And, the current world-wide recession has made the difficulties facing the industry extremely grave. Although an economic recovery would benefit steel, the underlying causes of the present conditions in the industry are such that economic recovery by itself will not remedy the industry's crisis.

While both management and government have sought to alleviate conditions in the industry, additional corrective actions are needed now. It would be tragic if the present crisis is permitted to undermine the positive policy changes which have recently provided the environment needed to maintain and expand the industry's international competitiveness. Survival of steel is important to the strength of America.

This Position and Policy Paper of the American steel industry briefly describes the depression conditions currently facing the industry, outlines various factors which have contributed to the current crisis conditions in steel, points out steps already taken toward improving steel's position, and sets forth urgently needed policy changes.

This paper is a blueprint for actions by management, labor and Government. If the Nation is to have a continuing supply of steel, coordinated efforts and cooperation among all parties are essential. Survival of steel is crucial to the strength of America!

I. The American Steel Industry is in Dire Straits

A. Steel Losses Are Mounting Rapidly

Losses incurred by domestic steel companies from their steel operations have mounted rapidly during 1982. Sixteen of the largest steel companies (accounting for approximately 80% of the nation's steelmaking capability) reported operating losses from steel operations of more than $250 million during the first quarter 1982; losses ballooned to more than $600 million for the second quarter and to almost $1 billion during the third quarter. Losses for the full year 1982 may have been some $4 billion from steel — the most disastrous results in the history of the industry! Every major integrated steel company lost substantial amounts of money on its steel operations in 1982.

Dividends have been cut by the overwhelming majority of the major American steel companies during 1982; the six largest steel companies slashed dividends by an average of 57%.

Although the Dow Jones Industrial Average is at virtually its highest level in history, the prices of large steel company stocks are far below where they once were; many steel stocks in early 1983 were selling at or near their lowest levels during 1960-1981 (Table 1).

Table 1

Prices of Steel Company Stocks Are Very Depressed

Company	Price Range 1960-1981		Closing Price January 5, 1983
	Low	High	
Armco	$10-1/8	$41-3/4	$17-1/4
Bethlehem	18-1/4	57-1/4	20-5/8
Inland	22-3/4	58-5/8	26
National	23	65-3/4	17-3/4
Republic	17-3/4	78-3/4	15-7/8
U. S. Steel	16-1/4	68-7/8	21

B. Shipments of Steel Products Declined Sharply During 1982

Shipments for the total year 1982 were the lowest since 1958; the fourth quarter's shipments were the lowest quarter of the year (Table 2). And, paradoxically, at a time when more than 60% of the nation's raw steel production capability is standing idle, steel imports in 1982 (much of which was unfairly traded) accounted for 22% of the domestic market — the highest share they have ever attained on a sustained basis. Neither the EEC, Japan nor any other steel producing area would permit such trade abuse.

High interest rates, designed to help curtail inflation, have depressed many of steel's markets.

Table 2

Steel Shipments Have Declined Sharply

Quarter	Shipments (Millions of Tons)
1981 (Av. Qtr.)	21.8
1982-I	17.2
-II	16.0
-III	14.0
-IV	12.8 (Est.)

C. Steel Production Plunged During 1982

Production during the last half 1982 was only slightly more than half what it averaged in 1981 (Table 3). Last-half 1982 production was the lowest of any non-strike half-year since 1945. Perhaps more significantly, utilization of steel's production capability during 1982 was the lowest of any year since 1938. Steel has reached a depression — not a recession — state.

Table 3

Steel Production Plunged in 1982

Quarter	Raw Steel Production (Millions of Tons)	Capability Utilization
1981 (Av. Qtr.)	30.2	78.3
1982-I	23.0	60.7
-II	19.7	51.3
-III	16.6	42.7
-IV	14.7 (Est.)	37.8 (Est.)

D. Some 200 American Steel Facilities Have Been Closed Permanently Since 1974

As shown in Appendix I, some 200 facilities have been permanently shut down in this country since 1974. While most of these closings involved only certain facilities within an existing steel plant, in more than two dozen cases entire steel plants were closed. Five steel companies in existence in 1978 have either ceased to exist or have been involved in bankruptcy proceedings (Alan Wood Steel, Wisconsin Steel, Penn-Dixie, McLouth Steel, and Washburn Wire).

In addition, the current depression in steel has resulted in the temporary closings of hundreds of other steel facilities.

E. Steel Employment Has Declined Substantially Since 1979 — Particularly During 1982

As shown in Table 4 below, employment in the American steel industry declined from 453,181 in 1979 to 246,747 in October 1982 — a decline of 46%!

Table 4

Steel Employment Has Declined Drastically

	Average Number of Employees		
	Wage	Salaried	Total
1979	341,931	111,250	453,181
1980	291,483	107,346	398,829
1981	286,219	104,695	390,914
October 1982 (latest available month)	163,517	83,230	246,747

While some of the decline in number of employees represents early retirements, terminations and quits, much of the employment decline in 1982 reflects layoffs of wage earners and salaried employees of steel companies representing about 85% of the industry. (Table 5)

Table 5

Number of Steel Industry Employees on Layoff Status Has Risen Sharply

Year 1982	Wage	Salaried	Total
January	61,771	3,744	65,515
February	64,481	3,977	68,458
March	84,292	4,761	89,053
April	89,784	5,464	95,248
May	100,131	6,127	106,258
June	104,594	6,859	111,453
July	107,905	7,830	115,735
August	116,748	8,832	125,580
September	129,634	11,442	141,076
October	137,253	11,278	148,531
November	147,070	13,357	160,427
December*	152,684	13,969	166,653

*Note: An additional 14,067 employees were working short work weeks.

In addition, more than half a million employees in supporting industries such as coal mining, ore mining, railroads, lake and river transportation and refractories are suffering joblessness.

F. Long-Term Debt Has Mounted Perilously

Long-term debt of American steel companies is now more than 50% of total stockholders' equity, versus only half that percentage two decades ago and only two-thirds that percentage as recently as 1975. Much of the debt has been incurred at the high rates of interest which have prevailed during the past few years.

Large debt at high rates of interest has two adverse effects on the industry. It virtually precludes additional borrowing, and the interest on the debt has a severe negative impact on financial results.

For most steel companies, issuing additional stock is not an available option.

G. Half of Steel's Capital Investment Projects Have Had To Be Cancelled or Deferred

In early September 1982, the American Iron and Steel Institute surveyed the current status of the $7.7 billion of capital investment projects which had been announced by steel companies since November 1980.

Projects totalling only $0.6 billion had been completed, while some $3.7 billion had either been cancelled or deferred — approximately half of the total announced. These cancellations and deferrals directly reflect the industry's growing financial inability to modernize and improve as well as greatly diminished incentive due to current underutilization of existing facilities and continuing uncertainty concerning imports. Since September, still more job-creating investments in tools of production have either been abandoned or sheived. Capital expenditures in 1982 were less than half the level needed to keep the industry competitive.

The present financial squeeze also severely affects the ability of steel companies to maintain existing plant and equipment in good working condition.

II. **The Causes of Today's Crisis Conditions in Steel are Clearly Identifiable.** During the past quarter century, certain changes have occurred in the American steel industry which require understanding by Government and by the public at large.

A. Steel Imports Have Risen Sharply

In the first ten months of 1982, imports captured 22.3 percent of the American market. Imports accounted for 2.3 percent of apparent supply during the Fifties, 9.9 percent in the Sixties and 15.3 percent in the Seventies.

Over the past two decades, as nation after nation began to use its steel industry for political and social goals, subsidization of foreign steel producers reached unprecedented levels. Below-cost pricing (i.e. dumping) by these loss-riddled companies penetrating the U. S. market, as well as other unfair trade practices, have resulted in widespread hardship for domestic producers and for their employees.

Dumping and other unfair practices have reflected the uneconomic expansion of many foreign steel industries during the past decade (Table 6). Much of this expansion has been aimed at the export market, principally the U.S. In most cases, this expansion was carried out with extensive support from foreign governments.

Table 6

Other Countries Have Expanded Steelmaking Capacity Far Beyond Their Domestic Market Requirements

	Annual Rates of Growth from 1969/70 to 1979/80:	
	Capacity	Consumption
Belgium-Luxemburg	3.0	−1.6
France	2.5	−0.5
Germany	3.3	−0.5
Italy	6.7	3.0
U.K. *	−0.2	−2.1
Japan	6.8	2.4
U. S.	0	−0.1

* Calculation made for 1978-79 to avoid effects of 1980 strike.
Sources: United Nations and OECD

The steel industry has clearly been affected by the general recession in the country; but equally clearly, rising import penetration during a period of falling demand (with such a large portion of the imports unfairly traded) has seriously exacerbated the situation.

Unfairly priced imports affect the domestic industry in at least three distinct but interrelated ways: First, they take sales volume away from domestic mills; second, they artificially depress selling prices except in periods of very high demand; and, third, they raise the average unit cost of production by depressing production volume. This triple-squeeze on profits and cash flow severely reduces the industry's ability and incentive to invest in job-creating tools of production.

In spite of the poor profitability of the U. S. steel industry relative to other sectors of the American economy, the industry has operated at the highest rate and has been the most profitable of all major steel industries in the world since the onset of the world steel crisis in the mid-1970s (Table 7).

Table 7

The American Steel Industry Outperformed
Its Major Competitors
1976 to 1981

	Average Utilization of Capacity (%)	Average Pretax Profit ($/ton Shipped)
U. S.	80.4	7.90
Japan	67.0	5.90
Germany	62.6	−19.80
France	71.4	−61.80
U. K. *	71.6	−64.70

* Strike year 1980 excluded from average
Source: World Steel Dynamics

A persistently low rate of return, relative to other U. S. industries, has made the American steel industry a relatively unattractive target for investment. Yet it is clear that the American steel industry should have been the most attractive investment opportunity for steel investment on a world-wide basis. Actually, the steel industries with the lowest profit performance have been among the most aggressive in undertaking capital investment; foreign government subsidies permitted inefficient firms to sustain massive losses and yet maintain higher levels of investment than those occurring in the U. S. This is the clearest evidence of the extent to which the free market mechanism has been distorted internationally.

Unfairly priced imports also have contributed to the high labor costs which the industry is presently experiencing. Beginning in 1959, the last year in which the steel industry experienced a strike, import volumes leaped every three years as customers engaged in hedge-buying in anticipation of a strike. The mere threat of a strike was enough. Finally, in 1973 and 1974, the industry and the union eliminated the strike threat by negotiating the Experimental Negotiating Agreement (ENA). The non-strike provision, however, exacted a high cost which the industry would not have paid if the pressing need had not existed to deal with the import problem.

During 1982 dumped and subsidized foreign steel continued to enter the U. S. market at very high rates. These unfairly traded imports have sharply reduced the ability and incentive of American mills seeking to modernize, have caused shrinkage of employment and of new job opportunities, and have in many other ways seriously injured the American steel industry.

B. Non-Competitive Labor Rate Increases Have Placed the American Steel Industry at a Substantial Cost Disadvantage

Hourly employment costs in the American steel industry have increased far faster since 1950 than the average of all manufacturing and far faster than in steel industries abroad. As shown in Table 8, steelworkers in 1950 earned 15% more than the all-manufacturing average. By 1960, that premium had grown to 39 percent — and then declined a bit by 1970. During the 1970s, steelworker employment costs under the Experimental Negotiating Agreement (ENA) grew explosively. Much of the increase was represented by Cost-of-Living Adjustments (COLA) and by increases in cost of existing benefits (primarily medical care, which skyrocketed in cost.) In 1980, the steelworker employment cost premium was 84 percent, and in 1982 (a year of reduced employment) it reached 114%. That is to say, the hourly employment cost for a steelworker is now well over twice that of the average manufacturing employee.

Labor and management must both share in the responsibility for today's hourly employment costs in steel. Labor demanded — and got — far too much. Faced with even higher prospective import penetration and a history of Presidential intervention in support of Union positions, steel company managements agreed to expensive labor cost contracts.

Today's uncompetitive employment costs must be changed; labor and management must each play a significant role in bringing about the change.

Table 8

Hourly Employment Costs in Steel Have Increased Far Faster Than in All Manufacturing

	Hourly Employment Costs			
Year	Steel Industry	All Mfg. Average	Steel Premium	Steel Premium as % of All Mfg. Avg.
1950	$ 1.91	$ 1.66	$ 0.25	15%
1960	3.82	2.74	1.08	39%
1970	5.68	4.28	1.40	33%
1980	18.45	10.05	8.40	84%
October 1982	25.39	11.86	13.53	114%

Although steelworkers are paid a premium over the all-manufacturing average in other major industrial nations, as well as in the U.S., the premium paid to steelworkers abroad has declined substantially since 1960 — in sharp contrast to the huge increase in such premium in this country. (Table 9)

Table 9

The Hourly Employment Cost Premium for Steelworkers (Versus All Manufacturing) Abroad Has Declined – But Has Risen Sharply in This Country

	% By Which Steelworkers' Employment Costs Exceed All Manufacturing		
	1960	1970	1980
United States	39%	33%	84%
Japan	90%	67%	63%
Canada	41%	32%	29%
West Germany	31%	25%	10%

The spread between hourly employment costs of steelworkers here versus steelworkers abroad has widened substantially since 1960. (Table 10)

Table 10

The "Spread" Between Hourly Employment Costs of Steelworkers Here Versus Abroad Has Widened Substantially

	Hourly Employment Costs		
	1960	1970	1980
United States	$3.82	$5.68	$18.45
Japan	.49	1.54	8.61
Canada	3.06	4.52	11.32
West Germany	N/A	2.95	14.52

C. Huge Expenditures Have Been Required for Pollution Control

The domestic steel industry has spent over $5.4 billion during the last 30 years for facilities to control air and water discharges to the environment. Perhaps of even greater importance are the annual costs associated with maintaining and operating these facilities. A report prepared by Arthur D. Little, Inc., indicates that by the end of 1984 operation and maintenance costs will be over $1.4 billion dollars per year. To this must be added the costs of recovering the capital invested in these facilities.

These environmental investment commitments result in effective control of the steel industry's emissions and discharges. Facilities are in place for control of 95% of the process emissions of particulate matter, the principal air pollutant from steel operations. Facilities in place by the end of 1984 will control 98% of all the pollutants in water discharges. Any further demands on the industry for control of pollution would involve very substantial capital expenditures without generating any appreciable environmental benefits. Nonetheless, it is anticipated that further demands being made on the industry will require continuation for the rest of the decade of capital expenditures in the range of $.5 billion per year. Even more expenditures could be required should regulatory programs be directed at full attainment of secondary air quality standards and the "zero discharge" goal of the Clean Water Act.

The impact of additional capital expenditures on the steel industry could result in significant losses of steel capacity and steelworkers' jobs as capital is diverted from necessary industry modernization to marginal environmental requirements. This would lead to even greater dependence on imported steel.

D. Costs of Energy Have Risen Rapidly

Steelmaking is an energy-intensive process; the steel industry accounts for about four percent of the nation's total energy consumption. During the past decade, energy costs have escalated at an unprecedented rate.

Intensive conservation efforts within the industry have made it possible to offset increasing energy costs to some extent, but the upward spiral in prices for natural gas and electricity has far outpaced the conservation efforts of steel companies.

Prices paid for the energy mix used by the integrated steel industry have risen from an average of $0.60 per million b.t.u. in 1972 to an average of $4.00 per million b.t.u. in the second quarter of 1982 — a 567 percent increase in a decade. Energy costs as a percent of total steel manufacturing costs have risen from 14 percent in 1972 to 18 percent in 1980. This percentage will increase still further over the next few years. Energy is second only to labor as the major cost factor in the steel industry; the present level of energy cost reflects both its high usage in the steel industry and the rapid escalation in the price of b.t.u's.

E. Tax Laws Have Been Biased Against Capital Formation

Federal tax policy of the Sixties and Seventies was heavily biased against savings and investment. Although there were periods when Congress or various administrations recognized this bias and attempted to begin to redress it, favorable changes were usually quickly followed by equally unfavorable changes restoring a large part of previous inequities. In fact, this uncertainty about tax treatment in itself was a major negative influence toward increased investment.

Of even greater significance is the fact that the tax treatment afforded capital investment throughout the past two decades was far less favorable in this country than in any other major industrial nation with which this nation competes. This affected the American steel industry both directly (in its own plant and equipment expenditures) and also indirectly (by restraining the growth in the markets for steel). Some three-fourths of total steel shipments go directly or indirectly to capital goods industries; slow growth in these industries translates into slow growth for steel consumption.

III. Steps Have Already Been Taken Toward Slowing Steel's Hemorrhaging

A. Some of the Most Flagrant Violations of U.S. Trade Laws and GATT Rules Have Been Addressed

For the past fifteen years, the American steel industry has sought the enforcement of U.S. trade laws against unfairly traded (dumped and subsidized) imports. Until recently little progress has been made in dealing with this problem; the administrative process operated very slowly, and foreign producers were able to circumvent the elimination of these internationally unacceptable trade practices.

In November 1981, the Department of Commerce self-initiated dumping and subsidy investigations on a variety of carbon steel products from several countries. In January 1982, American steel companies filed a series of suits charging that steel imports from Europe were entering the U.S. market only with the assistance of massive government subsidies. The U.S. Government found evidence of significant subsidies, especially in Britain, France, Italy, and Belgium. These subsidies had been granted in response to the world steel crisis and were designed to protect employment in the subsidizing countries — at the expense of employment in countries like the U.S.

The successful suits on the part of the American steel industry forced European producers to agree to limit their predatory exports to the U.S. market to slightly less than 6% of U.S. consumption. Although the agreement still grants European producers — even subsidized firms — a substantial share of the U.S. market (and in no way can be construed to be protectionist as some have characterized it), it indicates a willingness on the part of the U.S. Government to meet its responsibility to preserve unsubsidized, private firms in the U.S. from attack by subsidized foreign producers.

B. Specialty Steel Imports Are Now Monitored

The specialty steel producers refiled a complaint in January 1982 with the U.S. Trade Representative under Section 301 of the 1974 Trade Act against unfair subsidies by seven countries on stainless and tool steel products. Anti-dumping and countervailing duty actions were also filed during 1982 against stainless and tool steel imports from several foreign nations.

On November 16, 1982, President Reagan made a determination on the specialty steel Section 301 action under the 1974 Trade Act. He directed the U. S. Trade Representative to:

1. request the United States International Trade Commission to conduct an expedited investigation with regard to the five specialty steel products subject to the 301 investigation;
2. initiate multilateral and/or bilateral discussions aimed at the elimination of all trade-distortive practices in the specialty steel sector; and
3. monitor imports of specialty steel products subject to the 201 proceeding.

If during the pendency of the International Trade Commission Section 201 investigation imports cause damage which is difficult to repair, consideration would be given to what action, if any, might appropriately be taken on an emergency, interim basis under Section 301 of the Trade Act of 1974, consistent with U.S. international obligations.

C. The Tax Law Was Changed in 1981 to Foster Greater Investment in Plant and Equipment

Passage of the Economic Recovery Tax Act (ERTA) in 1981 promised increased savings and investment. ERTA included a three-year program of across-the-board general personal income tax cuts including reducing the maximum rate from 70% to 50%; indexing of personal income tax brackets for inflation after 1984; and the very substantial and long overdue change in the capital cost recovery system for business. The program also included liberalized leasing rules which were intended to benefit basic industries such as steel, airlines, railroads, etc., by granting some immediate cash flow benefit from investment tax credits and accelerated cost recovery. The program was designed to stimulate savings and investment for individuals and corporations.

Although percentages vary slightly from year to year, the forecasted revenue effect on a static basis for the five-year period 1982-1986 inclusive showed 21.6% of forecasted tax reductions for business and 78.4% for individuals. Although the program was heavily weighted to individuals, business enthusiastically endorsed the program because of the emphasis on investment. Not only was the program directed toward increasing capital formation but as President Reagan emphatically stated, it was equally important that business be able to invest with the confidence that the program would remain in place.

Unfortunately, it was deemed necessary to increase taxes in 1982 to offset the lagging economy's effect on budget deficits and gain acceptance for further budget cuts. Although the Tax Equity and Fiscal Responsibility Act (TEFRA) raised $91 billion in taxes for the fiscal years 1983-1985 conforming to the first budget resolution target, Congress has not yet delivered anything close to the $200 billion in real cuts that it promised over the same three years. The actual is closer to $31 billion — a shortfall of 85%.

The tax changes included in TEFRA, including the reduction in basis for one-half of the investment tax credit or reduction in the amount of credit, the cancellation of Accelerated Cost Recovery provisions scheduled to take effect in 1985-86, the new minimum tax preference provisions and the effective termination of safe harbor leasing are devastating to investment planning and substantially reduce the favorable impact on capital investment that was sought by the 1981 changes.

A critical analysis of the 1982 tax bill shows that direct business tax increases as categorized by the staff of the Joint Committee on Taxation will be $35 billion of the total of $91 billion. This does not include another $6.5 billion in increased Federal unemployment compensation tax on business, bringing the total to $41.5 billion. The total business tax reductions from ERTA were estimated at $92 billion over the same period. Due to the cancellation of the speedup of Accelerated Cost Recovery provisions scheduled for 1985-86, the net tax saving to business will be even smaller than at present.

D. Some Relief Has Already Been Provided to the Steel Industry on Environmental Demands

Over the past several years there have been efforts by the Federal government to moderate environmental demands on the steel industry. These have included both administrative and legislative efforts.

One area where administrative relief has been provided involves the recent modification to the "bubble" policy for air quality by the EPA. The "bubble" policy permits industry to effect emission control in a most cost-effective manner by grouping emission sources for developing control strategies. With the inclusion of the bubble policy in nonattainment areas, the steel industry has proposed numerous bubble strategies to reduce emissions at its steel plants and has been able to save several million dollars in recent years. Unfortunately, because of the time elapsed and delays involved in getting bubble plans approved at state and local levels, the effectiveness of this approach has been tempered and the full value and utility has yet to be realized. And, a recent circuit court decision has further eroded its usefulness.

A second area of relief began as a well-intentioned program to permit "stretch-out" of compliance dates, but severe restrictions on company eligibility have prevented achieving the full benefits intended. Few steel producers have been able to utilize the relief intended by Congress.

In regard to water pollution controls, in June 1982 the EPA issued Best Available Technology (BAT) guidelines for the steel industry. Initially, the EPA proposed guidelines that would have cost the industry over a billion dollars in new facility demands. However, the administration has since significantly modified those proposals so that now the cost could be less than one-half of that originally estimated.

The EPA under the Reagan Administration has been helpful in working with the steel industry to recognize innovative technology for control of fugitive emissions from steelmaking operations or to permit substitute fugitive dust controls via a "bubble". One example is the control of blast furnace cast house emissions. In several cases, the industry has been permitted to invoke process changes and modify operating practices, rather than to install equipment for the capture and cleaning of emissions. In these cases, emissions have been controlled effectively, rapidly, and at costs of less than $1 million for each furnace, whereas control equipment for those furnaces could have cost up to $10 million per furnace. This approach, coupled with fugitive dust "bubbles", could save the steel industry about $100 million in capital expenditures. Similar technologies are now being investigated for application for certain steelmaking practices as well.

E. Significant Operating Improvements Are Under Way in the Steel Industry

Average blast furnace output in the American steel industry has increased by over 50% since 1971. Within the last three years, two of the largest and most efficient blast furnaces in the world have come on line in this country. Continuous casting capacity will double in the next five years; approximately 16 continuous casting machines (16 million tons total capacity) will be installed during 1982-84. Other significant improvements are being made in metallurgy, computerization, and electric-furnace operations, where the U.S. industry is the world leader. Major steel consuming manufacturers with world-wide steel consuming operations have recently asserted that the quality of American steel is second to none.

F. Non-Union Employment Costs Have Been Curtailed Substantially

American steel companies during 1982 have not only substantially reduced administrative work forces in line with actual and projected economic conditions, but have made a large number of changes in compensation and benefit programs for both management and other non-union salaried employees. Accordingly, overhead has been reduced by approximately 25%. Following are examples of employment cost reductions made by American steel companies.

1. Items Affecting Both Management and Other Non-Union Employees
    a. Freezing of the Cost-of-Living Adjustment (COLA) indefinitely
    b. Elimination of the Special Vacation Benefit Program
    c. Elimination of fifth week of vacation
    d. Elimination of certain paid holidays
    e. Elimination of the vision care program
    f. Amendment of dental program to fixed fee schedule
    g. Establishment of hospital admissions deductibles
    h. Establishment of deductible for hospital emergency room usage
    i. Reduction in major medical insurance benefits
2. Items Affecting Only Management Employees
    a. Immediate reduction in salaries
    b. Elimination of overtime and holiday assignments
    c. Members of executive management were subject to all of the above reductions in compensation, plus other reductions as well.

G. Stringent Energy Conservation Measures Have Been Adopted by the Industry

Between 1972 and 1980, energy conservation efforts in the steel industry resulted in an 11% percent reduction in the b.t.u.'s required to produce a ton of finished steel product. Programs for conservation include operational changes and the installation of energy-saving equipment. In addition, major conservation gains have been made by expenditures for modern process equipment such as continuous casters and new furnaces.

Other extensive programs have also been developed to reduce energy consumption in the steel industry, and more improvement is in process. Process modification has been implemented to allow multiple fuel burning capability in order to convert to the least expensive energy. Utility cost reduction programs have been developed which stress use of off-peak rates, adjusting utility contract terms and working with public utility commissions to emphasize "cost of service" ratemaking.

Despite strenuous efforts within the steel industry, energy costs as a percent of the total steel manufacturing cost continue to rise.

Energy conservation measures of the industry have been aided by the Reagan Administration's progress toward improving the utilization of energy by deregulating petroleum products and by reducing certain regulatory burdens that existed under the Federal Energy Acts of 1978.

H. Diversification Efforts Have Been Intensified

A significant portion of the steel industry has diversified into a variety of non-steel businesses in recent years. The objective has generally been to improve not only the level of profits but also their stability.

Financing for these diversifications has been primarily from external sources and hence has not taken internally generated funds away from investment in steel facilities. In fact, most steel companies have spent far more on steel facilities in recent years than they have generated through profits and recovered through depreciation.

IV. Despite Corrective Actions Already Taken, More Are Needed — Now! American steel companies have been doing everything in their power to reduce costs, improve efficiency and increase their competitive ability. While some facilities currently shut down probably will never again operate, most of the facilities in the industry can be cost-competitive when demand for steel returns to more normal levels and if labor rates become more competitive. The level at which existing facilities will in fact operate in the future, and the level of the related employment, depends not only on resumption of demand for steel but also on satisfactory solutions to various policy issues — as discussed below. Adversary relationships between labor and the industry and between Government and the industry must be set aside in favor of cooperation; otherwise, present problems will not be solved.

A. Actions Are Still Needed on Imports and Foreign Trade

Dismantling of the market mechanism in the international steel market is the fundamental challenge confronting the Goverment's steel trade policy. Government intervention to offset the existing anti-competitive situation is needed to minimize the damage done to the U.S. economy and to its steel industry. A policy approach on the part of Government to defend its domestic industry from these practices would represent neither protectionism nor a "bailout".

1. Imports

a. U. S. trade policy must have as its cornerstone the full, vigorous and unremitting enforcement of U. S. trade laws. In addition, there must be equally vigorous enforcement of the international trading rules of GATT, with which our domestic trading laws are wholly consistent. The industry's concern extends beyond trade in steel mill products and includes trade in a wide range of products manufactured from steel as well.

b. The arrangements recently made between the European Communities and the U. S. need to be vigorously enforced, and it should be recognized that American steel companies intend to pursue trade cases with other countries violating U. S. trade laws.

c. A flexible "Buy-America" policy should be adopted with respect to all Federally financed projects, taking into consideration the circumstances facing our NATO allies.

d. The Administration should closely monitor specialty steel imports and aggressively take restrictive action on a country basis if imports do not decline to the Surge Mechanism import penetration levels while the Section 201 injury investigation is underway.

2. **Foreign Trade and Exchange Rates**

a. The existing early-warning system must be strengthened so that foreign steelmakers will be discouraged from building steel mills (or building excess capacity) merely to satisfy the only free market in the world — the United States. Why, for example, should Japan build a pipe mill when 80 to 85% of the drilling is in the U. S. and the domestic industry has the means to supply the U. S. demand?

b. In the same connection, the domestic industry believes it unfair for private, public and international banking institutions (with generous contributions from our government) to export money for the purpose of building foreign capacity in excess of the needs of that foreign country; pressure should be brought to bear to prevent this from happening. And, the U. S. should insist that OECD countries refrain from making loans for steel facilities which add to world over-capacity.

c. The present import situation is aggravated by the undervaluation of the Japanese yen. The virtually unanimous consensus among international government and industry leaders is that the yen is substantially undervalued. Many reasons for this undervaluation have been cited, the most frequently offered explanation being that Japan's capital markets are the most tightly controlled of any major economy. Whatever the reason, the undervalued yen allows expanding exports from Japan and could mask the economic reality of unfair trade practices. The Administration should encourage Japan to take measures toward permitting the value of the yen to move to levels consistent with free market conditions. This imbalance of the yen/dollar is distorting trade, is causing excessive imports and is usurping export markets for products made from steel.

d. American trade laws need to be updated to permit them to be more expeditiously and effectively enforced.

B. Labor Cost Reductions Are Essential

Non-competitive hourly employment costs are the single most critical problem facing the steel industry today. The Coordinating Committee Steel Companies* and the USW reached a tentative agreement to lower employment costs in November 1982, but that agreement was rejected by local union presidents, despite its approval by the International President, by the USWA Negotiating Committee, by the International Officers of the Union, and by its entire Executive Board including every District Director in the United States and Canada.

A reduction in basic steel industry employment costs is imperative if the industry is to gain competitive strength and avoid a strike. Steelworker wage employees remain the only group which has thus far not contributed to the sacrifices made by all other groups of employees (non-union, management, and executives) to restore the industry's vitality.

Management is dedicated to accomplishing moderation in employment costs, to improving productivity of all employees and to eliminating unproductive overhead.

C. Further Relief Is Needed To Avoid Unreasonable Environmental Demands

If the American steel industry is to avoid some of the unnecessary additional billions of dollars of expenditures for environmental purposes over the next decade, it will be necessary to have both legislative and administrative relief. This is highly desirable in view of the insignificant environmental benefits associated with removing the last fractional percentage of pollutants.

1. In the area of legislative relief, Congressional action is needed immediately to extend the date for compliance with the Clean Water Act. It is now obvious that the July 1, 1984 date for the next generation of NPDES permits is totally unrealistic from the standpoint of constructing and installing required controls. It is essential that a minimum of 42 months (from the date when the Clean Water Act is amended) be given in order to provide sufficient time for industry to meet the compliance deadlines. In addition, the Act should be amended to authorize modifications of the requirement for more stringent technological controls where not necessary to protect public health and water uses. These case-by-case modifications would avoid the present "treatment for treatment's sake" approach of the Act.
2. Deadlines in the Clean Air Act should be extended to provide realistic time for compliance with implementation plans, many of which even now are not approved.
3. With respect to administrative changes, it is essential that the Federal Government quickly promulgate new primary and secondary air quality standards for particulates in light of new evidence which indicates the present standards are overly stringent. This could eliminate current requirements for revisions and tightening of state implementation plans.
4. Involvement of the Federal Government in the development of state implementation plans should be minimized and limited to oversight to ensure that the law is

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* Allegheny Ludlum, Armco, Bethlehem, Inland, J&L, National, Republic and U.S. Steel.

being properly implemented. The states should have the authority to develop their own plans to comply with the Clean Air Act.

5. Flexibility should be available in applying the "bubble" policy. This will enable industry to develop control systems that are cost effective and that can be implemented in the most expeditious manner. In light of recent court decisions and pending challenges, it may be necessary for Congress to amend the Clean Air Act to remove any impediments to full use of the "bubble" and other similar regulatory reforms.

D. Help Is Needed on Energy-Related Matters

Further strides should be made by the Federal Government to enhance free market conditions in energy, to reduce legislative and regulatory burdens at the Federal level, and to encourage less onerous regulatory burdens at the state level.

1. All demand restraints on natural gas usage should be removed, including incremental pricing, by legislative changes to the Fuel Use Act and the Natural Gas Policy Act.

2. Utility rates should be based on "cost of service" principles, thus assuring that each utility customer pays his appropriate fair share of the costs of providing the service utilized. Federal programs which encourage deviations from "cost of service" principles should be eliminated, as well as mandatory conservation requirements that interfere with free market operations.

E. Further Tax Law Changes Are Needed

1. Some form of tax benefit transfer through leasing should be retained in the tax law to permit the steel industry and other equally hard-pressed basic industries to make optimum use of investment tax credit and capital cost recovery allowances during periods of depressed earnings.

2. Due to the substantial tax losses incurred by the steel industry in the past several years, the investment tax credits earned on past investments have not provided cash much needed for additional new equipment. The tax law should be changed to permit some effective form of immediate access to these investment tax credits which have been earned but are unused through the tax year 1982, even though tax liability does not exist sufficient to absorb these credits.

3. The scheduled increases in the rate of ACRS depreciation should be reinstated. (These were originally scheduled to take place in 1985 and 1986 but were repealed by TEFRA.) This will have the long-term benefit of providing cash to steel and other basic industries as well as offering substantial market opportunities.

4. In general, tax reform should be oriented toward encouraging investment in job-creating tools of production.

F. Rationalization of Steel Industry Facilities Should Be Encouraged by Government Policy

The permanent shutdown of overcapacity and inefficient facilities, coupled with modernization of remaining facilities ("rationalization"), is necessary if the American steel industry is to remain competitive worldwide. Unlike much of their competition abroad, American steel companies cannot expect government subsidies for this purpose.

Despite the rationalization which has already occurred, further retrenchment of facilities may be necessary. Some U. S. plants are characterized by an uneven mix of facilities; world-class operations are often linked with outmoded equipment. In order for the most efficient industry to emerge from the present crisis, the best facilities must be saved. And, steel companies must be encouraged to structure themselves in the most efficient manner to respond to intense world-wide competition.

Rationalization imposes heavy financial burdens which are extremely difficult to bear: (1) The cost of severance benefits, which can be very substantial where there is an older work force. (2) Costs for Supplemental Unemployment Benefits and unemployment compensation. (3) The extended costs of continuing pension contributions resulting from termination or retirement of employees.

To help ease the problems associated with rationalization, Government policy should permit mergers which create more efficient steel companies. The Government should allow joint ventures which reduce the capital costs associated with facilities such as blast furnaces, where economies of scale are significant. Jointly sponsored research and development would also benefit the industry. Finally, economically rational mergers will create a more efficient industry, providing greater employment of steelworkers, greater access to financial resources and boosting efficieny by matching facilities of merging firms. Antitrust policies should be applied in such a way that those forms of rationalization are available to steel firms.

The interests of steel consumers will be best served by an industry which attains a high level of efficiency with firms that are competitive both domestically and internationally. There are now enough competitors in the U. S. steel market — domestic integrated firms, the so-called "mini-mills", and offshore suppliers — to ensure that competition will remain intense. Antitrust authorities should recognize this fact and should defend interests of consumers by concentrating on the viability of domestic competitors and the efficiency effects of antitrust policies.

* * *

The steel industry is undertaking major "self-help" actions. What is now needed are changes in Government policies which will facilitate these self-help efforts. Without such changes, the present conditions in the industry will only worsen. But with the changes indicated, the industry can again become the world's premier steel producer. A strong steel industry will contribute to a strong and growing Nation.

APPENDIX I

Steel Company Shutdowns 1974-1982

(Note: Additional shutdowns occurred in 1982 after publication of this listing in U.S. Steel News in July 1982)

Closed or Reorganized Under Bankruptcy Laws

Company	Location	Facility	Date Auth. or Shutdown
Washburn Wire	Phillipsdale, RI	Wire Operations	1981*
McLouth	Trenton, MI	Integrated Company	1981
Penn-Dixie	Kokomo, IN	Integrated Company	1980**
Alan-Wood Steel	Conshohocken, PA	Integrated Company	1979*
Wisconsin Steel	Chicago, IL	Integrated Company	1980*

**Now defunct—not operating*

***Facilities at Kokomo, IN currently operate under the name of Continental Steel*

Closed

Company	Location	Facility	Date Auth. or Shutdown
U. S. Steel	Berwick, PA	Plant	1974
	Clairton Works	Coke Batteries #10, 11, 16 & 17	1982
	Clairton Works	Coke Batteries #12, 12A & 18	1980
	Clairton Works	No. 1 Blast Furnace	1978
	Clairton Works	14" Bar Mill	1977
	Central Furnaces, Cleveland, OH	Blast Furnaces	1979
	Cuyahoga Plant	Stainless Strip Facls.	1982
	Cuyahoga Plant	Tire Bead Wire Oper.	1976
	Cuyahoga Plant	No. 5 Hot Strip Mill	1980
	Duluth	Coke Plant	1978
	Duquesne Plant	No. 4 Blast Furnace	1980
	Edgar Thomson	Sinter Plant	1978
	Edgar Thomson	No. 6 Blast Furnace	1978
	Ellwood Works	Plant	1975
	Fairfield Works	Mold & Stool Foundry	1982
	Fairfield Works	No. 3 Galvanize Line	1982
	Fairfield Works	21" Billet Mill	1982
	Fairfield Works	Pig Iron Unit	1982
	Fairfield Works	Coke Batteries 3-8	1982
	Fairfield Works	Sinter Lines 1, 2 & 3	1981
	Fairfield Works	Axle Mill	1981
	Fairfield Works	Merchant Mill	1980
	Fairfield Works	No. 3 Electrolytic Tinning Line	1980
	Fairfield Works	Wire Mill	1980
	Fairfield Works	140" Plate Mill	1980
	Fairfield Works	Cotton Tie Mill	1977
	Fairfield Works	Ensley Steelmaking	1976
	Fairfield Works	Bessemer Rolling Mill	1975
	Fairless Works	No. 1 Continuous Anneal Line	1980
	Fairless Works	56" CR Shear	1980
	Gary Works	54" Shear Line	1982
	Gary Works	No. 9 Blast Furnace	1982
	Gary Works	No. 14 Coke Battery	1982
		Black Plate Shear Line	1980
	Gary Works	Stainless Temper Mill	1980
	Gary Works	Open Coil Annealing Furnace	1980
	Gary Works	40" Blooming Mill	1980
U. S. Steel	Gary Works	Four Bar Mills	1980
	Gary Works	4-High Stainless Reversing Mill	1980
	Gary Works	5 Stand CR Mill	1980
	Gary Works	Four Blast Furnaces	1980
	Gary Works	Hot Rolled Shear Line	1980
	Gary Works	No. 7 Galvanize Line	1980
	Gary Works	No. 4 Electrolytic Tinning Line	1980
	Gary Works	No. 2 Sinter Plant	1980
	Gary Works	80" Hot Strip Mill	1980
	Gary Works	Two Blast Furnaces	1978
	Gary Works	Two Bar Mills	1978
	Gary Works	No. 4 Open Hearth Shop	1975
	Gary Works	No. 1 Open Hearth Shop	1974
	Homestead Works	48" Plate Mill	1980
	Homestead Works	Wheel & Axle Facls.	1980
	Homestead Works	Sinter Plant & Pig Machine	1977
	Homestead Works	No. 4 Open Hearth	1974
	Irvin Plant	36" Pickle Line	1982
	Irvin Plant	3-Stand No. 1 & 4 Temper Mills	1980
	Joliet Plant	Plant, except No. 3 Rod Mill	1979
	Lorain Works	CW Hot Mill	1982
	Lorain Works	CW Galvanize Facility	1982
	Lorain Works	No. 3 Seamless Rotary Expander	1982
	Lorain Works	No. 5 Blast Furnace	1980
	National Plant	No. 2 Blooming Mill	1980
	National Plant	No. 2 & 4 Blast Furnaces	1978
	New Haven Works	Plant	1979
	Pittsburg Works	Pipe Finishing Facls.	1979
	Pittsburg Works	Rod Mill	1979
	South Works	No. 1 Electric Furnace	1981
	South Works	No. 10 Blast Furnace	1980
	South Works	Foundry	1979
	South Works	Alloy Bar Mill	1978
	South Works	No. 1-6 Blast Furnaces	1978
	Torrance Works	Plant	1979
	Vandergrift Plant	80" CR Mill	1982
	Vandergrift Plant	80" 2-High Temper Mill	1982
	Vandergrift Plant	80" Drever Roll Hearth	1982
	Vandergrift Plant	No. 5 Continuous Anneal Line	1980
	Vandergrift Plant	Fibercon Unit	1980
	Waukegan Works	Plant	1979
	Worcester Works	Cable Division	1977
	Ohio Steel Works	Plant	1979

Company	Location	Facility	Date Auth. or Shutdown
U. S. Steel	McDonald Mills	Plant	1979
	Container Plants		
	Camden	Plant	1979
	Chicago	Plant	1979
	Alameda	Plant	1977
	Steel Svce. Centers		
	Indianapolis	Warehouse	1980
	Hartford	Warehouse	1978
	American Bridge Div.		
	Gary, IN	Plant	1979
	Los Angeles, CA	Plant	1979
	Antioch, CA	Plant	1978
	Trenton, NJ	Plant	1976
Armco	Hamilton	Coke Plant	1982
	Houston	Stainless Tube Plant	1982
	LaHabra	Misc. Steel Products	1977
	Marion	Rebar & Shapes	1981
Bethlehem	Behlehem	Tool Steel Dept.	1981
	Bethlehem	35-22-18" Mills	1977
	Bethlehem	9"-12" Mills	1977
	Bethlehem	Central Tool Annex	1977
	Johnstown	Coke Oven Dept.	1982
	Johnstown	Electrical Div.	1982
	Johnstown	Blast Furnace Dept.	1981
	Johnstown	Wheel Plant	1978
	Johnstown	Plate Mill	1977
	Johnstown	13" Mill	1977
	Johnstown	36" Mill	1977
	Johnstown	Steelmaking	1977
	Lackawanna	Lime Plant	1981
	Lackawanna	12" Bar Mill	1981
	Lackawanna	Foundry & Pattern Shop	1980
	Lackawanna	Scrap Melter Dept.	1980
	Lackawanna	Five Rolling Mills	1977
	Lackawanna	Hot Mill Finishing	1977
	Lackawanna	Five Coke Batteries	1977
	Lackawanna	Four Blast Furnaces	1977
	Lackawanna	One BOF Vessel	1977
	Los Angeles	Industrial Fastener Div.	1981
	Los Angeles	Wire Mill	1978
	Sparrows Point Plant	No. 2 Bar Mill	1977
	Steelton	Iron Foundry	1977
	Lanman	Bolt Plant	1981
	Dunellen	Plant	1980
	Leetsdale	Plant	1978
	Grace Ore Mine	Mine	1978
	Boston	Rebar Shop	1978
	Hallendale	Plant	1978
	So. San Francisco	Plant	1977
	Meramec Mining Co.	Mine	1977
	Cornwall	Pellet Plant	1977
	Pottstown	Fab. Works	1976
	Torrance	Fab. Works	1976
Bethlehem	Bethlehem	Fab. Works	1976
	Chicago	Fab. Works	1975
	Pinole Point	Fab. Works	1975
Inland	Melrose Park	Structural Fab.	1981
	Dayton Svc. Center	Warehouse	1980
Jones & Laughlin	Aliquippa	Rod & Wire Mill	1982
	Aliquippa	South Mills Boiler House	1981
	Aliquippa	Welded Tube Dept.	1981
	Aliquippa	Seamless Tube Dept.	1980
	Aliquippa	A-5 Blast Furnace	1980
	Aliquippa	Sinter Plant	1979
	Aliquippa	Coke Oven Battery	1979
	Aliquippa	Coke Oven Battery	1977
	*Brier Hill	Plant	1977-1980
	*Campbell	Plant (Most Facls.)	1977-1980
	Cleveland	Sinter Plant	1976
	*Indiana Harbor	No. 1 Tin Mill	1981
	*Indiana Harbor	No. 1 Blooming Mill	1979
	*Indiana Harbor	CBW	1978
	*Indiana Harbor	Bar Mill	-1975
	*Indiana Harbor	Open Hearth	1975
	Pittsburgh	Hot Strip & Finishing Oper.	1981
	Pittsburgh	Ingot Mould Foundry	1981
	Pittsburgh	Blast Furnace, Open Hearth & Maintenance Units	1979
	Pittsburgh	Spike Oper.	1978
	Pittsburgh	Billet Scarfing & Pickling Oper.	1977
	Pittsburgh	Cold Strip Mill Units	1974
	*Struthers	Spike Mill & Roof Bolt Oper.	1979
	*Youngstown	Metal Products Plant	1981
	Hill Annex	Ore Mine	1978
	New York	Ore Division	1978
	Union Deck	Transportation	1978
	Lancaster	Steel Service Center	1978
	Niles	Tube Mill	1978
	Warren	Bar, Rod & Wire Plant	1977
	Lancaster	Container Plant	1975
	Los Angeles	Stainless & Strip Plant	1974
	Toledo	Container Plant	1974
	Cleveland	Oil & Inspection Line	1974
National Steel Co.	Portage, IN	Steel Flooring Oper.	1982
	Terre Haute, IN	National Steel Prod.	1981

* *Former Youngstown Sheet & Tube Company Operations*

Company	Location	Facility	Date Auth. or Shutdown
Republic Steel Co.	Cleveland, OH	Berger Div.	1976
	Charlotte, NC	Truscon Warehouse	1974
	Massillon, OH	Coke Plant	1981
	Massillon, OH	Bar Mill	1977
	Niles, OH	Annealer	1979
	Niles, OH	Pickler	1979
	Niles, OH	Tandem Mill	1979
	Niles, OH	Joist Plant	1974
	Youngstown	Coke Plant	1982
	Youngstown	Maintenance & Shipping Depts.	1980
	Youngstown	Warehouse	1978
	Youngstown	Truscon Div.-Dept. D&F	1975
Kaiser	Fontana, CA	CR Sheet Mill	1979
	Fontana, CA	Fabrication	1981
	Los Angeles, CA	Auto Stamping	1982
	Fontana, CA	Rolling Mills	1977
Ceco Corp.	Birmingham, AL	Rebar Facility	1977
A. O. Smith Corp.	Milwaukee, WI	Pipe & Tubing	1974
Tonawanda Iron	N. Tonawanda, NY	Blast Furnace	1974
Vesco Metals Corp.	Latrobe, PA	Plant	1974
Pacific States Steel Corp.	Union City, CA	Steelmaking & Bar	1979
Interlake Steel	Newport, KY	Plant	1980
	Wilder, KY	Plant	1980
Southwest Steel Rolling Mills, Inc.	Los Angeles, CA	Plant	1977
Yale Steel	Wallingford, CT	Plant	1980
Levinson	Pittsburgh, PA	Fabricating	1980
Steelmet	Port View, PA	Stainless	1980
Cleveland Cliffs	Coleraine, MN	Ore Mine	1981
Teledyne	McKeesport, PA	Specialty Steel	1981
Pending Closures			
Republic	Buffalo, NY	Bar Mills (2)	
	Youngstown, OH	Blast Furnaces (2)	
	Youngstown, OH	Fab. & Coil Coating	
National Steel Co.	Weirton, WV	Steel Plant	
Youngstown Steel*	Youngstown, OH	Track Spikes	
Kaiser	Fontana, CA	Coke Ovens	
	Fontana, CA	Pipe Production	
	Fontana, CA	Steelmaking	
Connors Steel Co.	Huntington, WV	Steelmaking	
Crucible Steel	Midland, PA	Plant	

**Defaulted on loan*

Chairman GIBBONS. Our next witness is Dr. Lena.

STATEMENT OF ADOLPH J. LENA, CHAIRMAN, ADVISORY COMMITTEE, SPECIALTY STEEL INDUSTRY OF THE UNITED STATES, ACCOMPANIED BY DAVID A. HARTQUIST, COUNSEL

Mr. LENA. Mr. Chairman and members of the subcommittee, I am Dr. Adolph Lena, chairman of the advisory committee of the Specialty Steel Industry of the United States, and chairman of the board and chief executive officer of the Al Tech Specialty Steel Corp.

I am pleased to have the opportunity to appear before you today to describe the changes that the specialty steel industry believes are needed in the U.S. international trade laws.

In the interests of time, I will just summarize my written testimony which I submitted to the committee staff. I ask that my written statement be included in the record.

Chairman GIBBONS. Certainly it will.

Mr. LENA. The Specialty Steel Industry of the United States is a nonprofit corporation and trade association, representing 17 producers of tool and stainless steel. The names and locations of the firms represented in the Specialty Steel Industry of the United States are contained in exhibit A to my written testimony.

The 17 producers account for about 90 percent of the U.S. production of specialty steel products. President Reagan noted in his November 16, 1982, decision in our section 301 case, which is discussed in our written statement, that the specialty steel industry is an efficient technologically up-to-date and export-oriented branch of the steel industry. Its output is used in a wide range of demanding applications critical to our industrial economy.

My industry has devoted substantial time and resources in recent years to deal with the problem of specialty steel imports. These efforts began over 10 years ago when we initiated and won antidumping cases on French stainless steel wire rod and Swedish stainless steel plate products. In 1975 we filed and won a section 201 case before the U.S. International Trade Commission.

Attached as exhibit B to my written testimony is a chronology of the specialty steel industry's efforts to deal with our import problems since the original section 201 case was filed in 1975. At the present time we have pending seven antidumping and countervailing duty actions under title VII of the Tariff Act of 1930, and a section 301 case being acted upon by the U.S. Trade Representative, cases which were initiated by the industry, plus a section 201 case, which was recently initiated by USTR at the President's request.

In addition, we have participated in several reviews of outstanding dumping orders under section 751(a) of the Tariff Act of 1930. Furthermore, we have several actions pending at the U.S. Court of International Trade contesting administrative agency decisions under the antidumping and countervailing duty laws.

The Trade Agreement Act of 1979 made vast improvements in the trade remedy laws that existed prior to that act. Our experience since passage of the 1979 act, however, indicates that the law still needs significant changes. I will briefly outline some of the industry-suggested changes in the laws and the reasons for these changes.

Section 201 of the Trade Act of 1974 requires imports to be a substantial cause of serious injury to the domestic industry before relief can be granted under the so-called escape clause. Substantial cause is defined by the statute as a cause that is important and not less than any other cause. This is an elusive and difficult standard to meet.

Domestic industries have been forced to argue that imports are a greater cause of injury than all the factors that cause a recession, making escape clause relief in a recession extraordinarily hard to obtain. As a result, the ITC has recommended relief in only about one-half of the escape clause investigations that it has conducted since passage of the 1974 act.

I should add that we believe that the specialty steel industry has met that standard in the ITC investigations now in progress. We expect that the ITC will rule favorably in our case on March 24.

We have no quarrel with an injury standard in escape clause proceedings that is more stringent than that provided in antidumping and countervailing duty proceedings. It makes sense for it to be somewhat more difficult to obtain. Section 201, however, is more restrictive than necessary. Article XIX of the GATT allows import relief to be granted under an escape clause proceeding for imports that are a cause of serious injury without requiring the additional test of substantiality.

Congress should amend the causation standard to eliminate the substantial cause requirement and adopt instead the article XIX GATT test of imports as a cause of serious injury.

In the 1979 act Congress required for the first time in countervailing duty investigations that imports from a country under the agreement injure a domestic industry before relief can be granted. We think that adding an injury test was a mistake. Importation of subsidized products should be a per se violation of this country's countervailing duty laws.

Because subsidies distort the marketplace, they should be countervailed without requiring proof of injury to the domestic industry. Subsidies do not just happen, they are the result of deliberate Government policies. Our laws should indicate to foreign governments that when they deliberately subsidize their industries and those industries export subsidized products to the United States, the U.S. industries are not going to be put to the burden and expense of showing the harm caused them.

At the least, harm from subsidized products should be presumed. The law should be changed to make clear that once a finding of subsidization has been made by the Commerce Department, the burden of proof in a countervailing duty case should shift to the respondents to show that the domestic industry has not been injured by subsidization.

The law now permits the International Trade Commission to combine or cumulate imports from different countries when making injury determinations in antidumping and countervailing duty investigations. Cumulation makes sense.

Death by 1 or 100 blows is equally fatal. The ITC, however, has been hesitant to cumulate imports at all, and extremely reluctant to do so in preliminary injury determinations. We believe that it would be helpful to amend the statute to require cumulation in certain circumstances.

The antidumping and countervailing duty laws now provide that injury must be by reason of imports of dumped or subsidized merchandise. The focus of the statute is on import of imports subsidized or dumped not on the margin of dumping or the subsidies. Nevertheless, there has been sufficient confusion and debate at the ITC to warrant clarifying language in the committee report.

We suggest the report language make clear that in determining injury the commission should look at the nature of the imports, that is, whether they are dumped or subsidized, rather than attempt to link any injury suffered by the domestic industry to the site of the dumping or subsidy margins.

Congress has recognized that initial findings in this area as well as section 751 reviews of those findings are only as credible as the information upon which they are based. Consequently, in the 1979 Act Congress required the administering authority to verify information received in all stages of antidumping and countervailing duty investigations. The Commerce Department's practice, however, is not to verify information in all section 751 reviews. In fact, there has been no verification of information on entries of stainless steel wire rod from France since about 1974.

Commerce's approach ignores congressional intent expressed in the 1979 Act, and it undermines the vigorous enforcement of the antidumping and countervailing duty laws. It makes no sense to require detailed verification of all information submitted by foreign producers to determine whether less than fair value sales have taken place initially but not require such verification when the agency actually assesses dumping duties.

In the industry's view, the law is clear, verification is required for every section 751 review. We recommend that Congress reiterate this understanding in appropriate statutory or report language.

Because the antidumping and countervailing duty laws are designed to provide prospective relief only, they provide no remedy for the injury that the industry has suffered prior to filing a petition with the Government. Moreover, the antidumping and countervailing duty laws have little deterrent effect because a foreign producer knows that it can dump and sell subsidized products until it gets caught by a preliminary affirmative finding or if the law is amended, as I suggest in my written statement, by the Commerce Department initiation of an investigation.

As I mention in my written testimony in connection with our suggestion for changes in the Antidumping Act of 1916, a remedy for injury caused by dumping and improper subsidization should relate back to the time the products begin to injure domestic industry.

Mr. Chairman, my testimony contains other recommendations for changes in the law, but I would like to mention now just one other concern. In the course of your hearings you will receive numerous recommendations for legislative changes, many of which you will not adopt. In the past the Commerce Department has argued that failure by Congress to change the law on a particular issue means that Congress has ratified the administrative agency's practice concerning that issue.

In fact, in recent litigation concerning the exporter's sales price offset issue I discuss in my written testimony, the Commerce Department's counsel argues that Congress endorsed the ESP offset because the 1979 Act did not prohibit its use. Commerce lawyers pointed to a GAO report that discussed the ESP offset and argued that Congress was on notice of the offset through the GAO report and failed to do anything about it.

Amazingly, the judge hearing the case agreed with Commerce's contention and indicated that congressional failure to enact legislation outlawing the practice was tantamount to legislative approval.

I urge you not to allow the agencies and courts to misinterpret any action you take on trade legislation in this 98th Congress. I respectfully suggest you make clear in the legislative history that inaction by Congress on any issue affecting current administrative practice does not indicate congressional approval of or acquiescence in that program.

Thank you very much for the opportunity to testify. The members of the Specialty Steel Industry of the United States and our counsel stand ready to work with the members of the subcommittee and your staff to make the trade laws more efficient and effective. I would be pleased to answer any questions you may have. Thank you very much.

[The prepared statement follows:]

STATEMENT OF DR. ADOLPH J. LENA ON BEHALF OF THE SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

SUMMARY

The Specialty Steel Industry of the United States has extensive experience with the international trade laws and that experience indicates that the trade laws need significant changes. Among those changes are:

1. The injury standard in escape clause cases should be amended to delete the requirement for "substantiality."

2. The injury standard countervailing duty cases should be eliminated. At a minimum, the law should be changed to shift the burden of proof to respondents to show that the domestic industry has not been injured by the subsidized imports.

3. The law should specify when it is appropriate to cumulate the impact of imports from different countries in countevailing duty and antidumping cases.

4. Report language should make clear that in determining injury, the ITC should look at the nature of the imports, that is whether they are dumped or subsidized, rather than attempting to link any injury suffered by the domestic industry to the size of the dumping or subsidy margins.

5. In countervailing duty and antidumping cases, the ITC should be authorized to define a "like" product, and hence an industry, in terms of the production processes, even if there are differences in end uses of the product.

6. The antidumping and countervailing duty provisions should be amended to allow suspension of liquidation at the time the Department of Commerce commences an investigation.

7. The antidumping law should be amended to eliminate the exporter's sales price offset.

8. The antidumping law should be amended to allow quantitative restriction agreements.

9. Statutory or report language should make clear that verification is required for all proceedings under section 751(a) of the Tariff Act of 1930.

10. The Antidumping Act of 1916 should be amended to eliminate (a) the requirement of establishing intent to injure a U.S. industry and (b) the threat of criminal penalties.

11. Legislative history should make clear that inaction by Congress on any issue affecting current administrative practice does not indicate Congressional approval if, or acquiescence in, that practice.

STATEMENT

Mr. Chairman and members of the Subcommittee: I am Dr. Adolph J. Lena, Chairman of the Advisory Committee of the Speciality Steel Industry of the United States and Chairman of the Board and Chief Executive Officer of Al Tech Specialty Steel Corporation.[1] I am pleased to have the opportunity to appear before you today to describe the changes that the specialty steel industry believes are needed in the United States international trade laws.

My testimony today will describe the U.S. specialty steel industry and its years of efforts to deal with the import problem. I will mention the actions we have taken pursuant to the U.S. trade laws to obtain relief from imports that are causing injury to the domestic specialty steel industry. Finally, I will outline the changes in the trade laws that are necessary to more fairly and effectively deal with the problems facing American industry and its workers.

DESCRIPTION OF THE SPECIALTY STEEL INDUSTRY

The Specialty Steel Industry of the United States is a non-profit corporation and trade association representing 17 domestic producers of tool and stainless steel. The names and locations of the firms represented in the Specialty Steel Industry of the United States are contained in exhibit A to my written testimony. The 17 producers account for about 90% of the U.S. production of specialty steel products.

The specialty steel industry is separate and distinct from the carbon steel industry. Specialty steels include stainless and tool steels, which account for approximately 1.5 percent of the tonnage and 10 percent of the dollar value of domestic shipments of steel. Our high technology products are frequently produced in custom-ordered quantities for use in goods that demand special durability, hardness or resistence to heat, corrosion, and abrasion. Because of these unique properties, specialty steels require special processing equipment and expensive alloying ingredients, and generally utilize from 7 to 15 times more man hour per ton than ordinary carbon steel. President Reagan noted in his November 16, 1982 decision on our section 301 case, which I will discuss shortly, that, "the Specialty Steel Industry is an efficient, technologically up-to-date and export-oriented branch of the steel industry. Its output is used in a wide range of demanding applications critical to an industrial economy. . . ."

EFFORTS TO DEAL WITH THE IMPORT PROBLEM

My industry has devoted substantial time and resources in recent years to deal with the problem of specialty steel imports. Those efforts began over 10 years ago when initiated and won antidumping cases involving French stainless steel wire rod products and Swedish stainless steel plate products. In 1975, we filed a section 201 case before the U.S. International Trade Commission ("Commission" or "ITC"). Following an affirmative Commission decision, President Ford imposed quantitive restraints on specialty steel imports. In 1977, President Carter reviewed the speciality steel import restraint program. The Commission held hearings and recommended a continuation of the program. On January 18, 1978, President Carter decided to continue the import restraint program. In 1979, the Commission held hearings on my industry's request to extend the import limitation program. The Commission voted 2-2 to continue the import limitation but President Carter decided to phase it out. All import restraints were ended as of February 14, 1980.

Following the expiration of the import limitation program, we requested inclusion of all specialty steel products in the trigger price mechanism ("TPM"). Although the Commerce Department did not include specialty steel in the TPM, the Department established a "surge mechanism" program early in 1982. This program proved totally ineffective, and in late 1981 we filed a case under section 301 of the Trade Act of 1974, as amended, with the United States Trade Representative. Following the initiation of that proceeding, we filed 7 additional antidumping and countervailing duty cases with the Department of Commerce and the International Trade Commission. With one exception, we have had affirmative decision from both the Commerce Department and the Commission.

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[1] AL Tech Specialty Steel Corporation's address is Post Office Box 152, Dunkirk, New York 14048.

Last November, the President issued a written decision in the section 301 case we filed the year before. In his decision, the President directed the United States Trade Representative ("USTR") to request the ITC to conduct an expedited investigation under section 201 of the Trade Act of 1974. In addition, the President directed the initiation of multilateral and bilateral discussions aimed at the elimination of all trade distortive practices in the specialty steel sector. He did this in recognition of the trade-distorting practices on both the importing and exporting side of our business. In other works, the President recognized that much of our problem is rooted in unfair trade practices such as dumping and foreign government subsidization. By the same token, he also recognized that we are an export-oriented branch of the steel industry and that foreign government barriers to our exports prevent us from taking full advantage of our competitiveness internationally.

The third leg of the President's decision is the monitoring of imports of specialty steel products subject to the section 201 proceeding. The President has provided for action to be taken on an emergency, interim basis under section 301 if, during the section 201 investigation, "imports cause damage which is difficult to repair," citing language from the General Agreement on Tariffs and Trade ("GATT"). We believe that such damage is occurring, and have urged the Administration to undertake an interim import relief program.

It should be clear that we have we have extensive experience with the trade remedy laws. Attached as Exhibit B to my testimony is a chronology of the specialty steel industry's efforts to deal with the import problem since the original section 201 case was filed in 1975. At the present time, we have pending 7 antidumping and countervailing duty actions under Title VII of the Tariff Act of 1930 and the section 301 case being acted upon by the U.S. Trade Representative—cases which were initiated by the industry—plus the section 201 case, which was initiated by USTR at the President's request. In addition, we have and are participating in reviews of outstanding dumping orders under 751(a) of the Tariff Act of 1930. Furthermore, we have several actions pending at the U.S. Court of International Trade, contesting administrative agency decisions under the antidumping and countervailing duty laws.

CHANGES NEEDED IN THE TRADE LAWS

The Trade Agreements Act of 1979 made vast improvements in the trade remedy laws that existed prior to that Act. Our experience since passage of the 1979 Act, however, indicates that the laws still need significant changes. I will outline the industry's suggested changes in the laws and the reasons for those changes below.

1. Injury Standard in Escape Clause Cases

Section 201 of the Trade Act of 1974 requires imports to be a "substantial cause" of serious injury to the domestic industry before relief can be granted under the so-called "escape" clause. "Substantial cause" is defined by the statute as "a cause which is important and not less than any other cause." [2] This is an elusive and difficult standard to meet. Domestic industries have been forced to argue that imports are a greater cause of injury than all of the factors that cause a recession, making escape clause relief during a recession extraordinarily hard to obtain. As a result, the ITC has recommended relief in only about one-half of the escape clause investigations that it has conducted since the passage of the 1974 Act.[3] I should add that we believe that the specialty steel industry has met that standard in the ITC investigation now in progress. We expect that the ITC will rule favorably in our case on March 23.

We have no quarrel with an injury standard in escape clause proceedings that is more stringent than that provided in antidumping and countervailing duty proceedings; it make sense for escape clause relief to be somewhat difficult to obtain. Section 201, however, is more restrictive than necessary. Article XIX of the GATT allows import relief to be granted under an escape clause proceeding for imports that are "a cause of serious injury" without requiring the additional test of "substantiality." Congress should amend the causation standard to eliminate the "substantial" cause requirement and adopt instead to the GATT Article XIX test of "imports as a cause of serious injury."

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[2] Section 201(b)(4).

[3] The President has granted relief in less than half of those cases, thus making the petitioner's chances of obtaining relief only about one in four.

2. Injury Standard in Contervailing Duty Cases

In the 1979 Act, Congress required for the first time in countervailing duty investigations that imports from a "country under the Agreement" injure a domestic industry before relief can be granted. We think that adding an injury test was a mistake.

Importation of subsidized products should be a per se violation of this country's countervailing duty laws; because subsidies distort the market place, they should be countervailed, without requiring proof of injury to the domestic industry. Subsidies do not just happen, they are the result of deliberate government policies. Our laws should indicate to foreign governments that when they deliberately subsidize their industries and those industries export subsidized products to the United States, the U.S. industries are not going to be put to the burden and expense of showing the harm caused by those subsidies.

At the very least, harm from subsidies should be presumed. The law should be changed to make clear that once a finding of subsidization has been made by the Commerce Department, the burden of proof in a countervailing duty case should shift to the respondents to show that the domestic industry has *not* been injured by the subsidized imports.

3. Cumulation in Antidumping and Countervailing Duty Investigations

The law now permits the International Trade Commission to combine or "cumulate" imports from different countries when making injury determinations in antidumping and countervailing duty investigations. Cumulation makes sense; death by one or one hundred blows is equally fatal. The ITC, however, has been hesitant to cumulate imports at all and extremely reluctant to do so in preliminary injury determinations. There also has been some question about cumulation of imports of the same product in separate countervailing duty and antidumping cases. We believe that it would be helpful to amend the statute to require cumulation in certain circumstances. Such an amendment would help to ensure that domestic industries are not denied relief because of an unwise exercise of discretion by the Commission.

4. Causal Linkage in Antidumping and Countervailing Duty Cases

The antidumping and countervailing duty laws now provide that injury must be "by reason of imports" of dumped or subsidized merchandise. The focus of the statute is on the impact of imports that have been subsidized or dumped, not on the margin of dumping or subsidy. Nevertheless, there has been sufficient confusion and debate at the ITC to warrant clarifying language in the Committee report. We suggest that report language make clear that in determining injury, the Commission should look at the nature of the imports, that is, whether they are dumped or subsidized, rather than attempt to link any injury suffered by the domestic industry to the size of the dumping or subsidy margins.

5. Definition of Industry in Antidumping and Countervailing Duty Cases

The law provides that the "industry" to be focused upon in determining injury in antidumping and countervailing duty cases refers to the domestic producers of a "like" product.[4] A like product, in turn, is defined as a product which was "like, or in the absence of like, most similar in uses and characteristics with, the article subject to an investigation under this title."[5] Using this definition, the Commission has focused primarily on end uses in determining the industry whose injury is being measured. This narrow focus on end uses results in the splintering of what logically should be considered one industry into many different "industries." For example, stainless steel bar and rod are produced virtually the same way; only in the finishing stage are the final products differentiated. Yet in the stainless steel bar and rod countervailing duty cases before the ITC, the Commission not only defined bar and rod as two industries but further separated hot-rolled from cold-formed bar.

Although it is appropriate to consider the end uses of the imported product when determining the scope of the domestic industry, the Commission should be authorized to consider other criteria as well. The Commission should be authorized, for example, to find a like product, and hence an industry, if the domestic production processes are similar, even if there are differences in end uses of the product. The statute should be amended to allow this broader, more flexible approach to defining an industry.

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[4] Section 771(4)(A) of the Tariff Act of 1930, as amended.

[5] Section 771(10) of the Tariff Act of 1930, as amended.

6. Timely Imposition of Duties

The law now provides domestic industries and workers no relief until the Department of Commerce publishes in the Federal Register an affirmative preliminary antidumping or countervailing duty finding. The Department makes preliminary findings in countervailing duties cases between 85 and 150 days after the domestic industry files a petition and in antidumping cases, between 160 and 210 days after a petition is filed. As a result, the bonding requirements of the Act and suspension of liquidation, which are triggered by an affirmative preliminary finding, may not go into effect until seven months after the domestic industry files its petition. Importers often try to bring as much of the subject product as possible into the country prior to the preliminary determination. This practice increases the injury suffered by domestic industries.

One way to deal with this problem is to require early suspension of liquidation. Requiring suspension of liquidation at the time the Department of Commerce accepts the case for investigation would ensure that importers cannot evade the trade laws and the exacerbate the injury caused by the unfairly treated imports during the course of an investigation. Thus, we recommend amending the law to provide for earlier suspension of liquidation.

Earlier suspension of liquidation, however, does not go far enough. Because the antidumping and countervailing duty laws are designed to provide prospective relief only, they provide no remedy for the injury the industry has suffered prior to filing a petition with the Government. Moreover, the antidumping and countervailing duty laws have little deterrent effect because a foreign producer knows that it can dump and sell subsidized products until it gets caught by a preliminary affirmative finding (or if the law is amended as I suggested above, by the Commerce Department initiation of an investigation). As I mention later in connection with our suggestion for changes in the Antidumping Act of 1916, a remedy for injury caused by dumping and improper subsidization should relate back to the time the unfairly traded products begin to injure the domestic industry.

7. Elimination of Exporter's Sales Price Offset

When Congress amended the antidumping law in 1958, it allowed for the first time statutory adjustments to foreign market value and United States price for differences in the circumstances of sale in the two markets. The legislative history and implementing regulations made clear that in order for an adjustment to be made for a difference in circumstance of sale, the selling expense had to be directly related to the sale in question.

The Treasury Department's practice of requiring selling expenses to be directly related to the sales in question continued through the mid-70's. In 1976, however, the Treasury Department adopted a new regulation calling for an "exporter's sales price offset" ("ESP offset"). The ESP offset, in essence, allows a reduction in antidumping liability for foreign producers by granting adjustments to foreign market value for indirect rather than direct selling expenses. The ESP offset is only available to producers who sell to the United States through related parties. The ESP offset, which was included in the Treasury's final regulations but never proposed for public comment, was only supposed to be used in the "fair value" stage of an antidumping investigation. When the Treasury Department proposed in 1979 to expand the ESP offset to the "forest market value" stage of antidumping investigations—that is, the assessment phase—members of this Committee objected strenuously. Nevertheless, when the Commerce Department obtained jurisdiction over the trade laws in 1980, it published a final regulation allowing use of the ESP offset in foreign market value investigations.

The ESP offset violates the intent of Congress when it enacted the 1958 amendments to the antidumping law. And, as evidenced by this Committee's objections to the Treasury proposal in 1979, more recent Congresses have not acquiesced in its use. The ESP offset benefits producers who sell through related U.S. subsidiaries rather than directly to unrelated parties because the offset is not available in purchase price transactions. By so doing, the ESP offset destroys the attempt by Congress to put purchase price and exporter's sale price transactions on the same basis and to only allow adjustments that are directly related to the sales being investigated.

We recommend that Congress amend the antidumping provisions of the Tariff Act to make it clear that the exporter's sales price offset is not permissible and that indirect selling and general expenses are not eligible for use either directly or indirectly as offsets or adjustments to the price used as the basis of foreign market value.

8. Allow Quantitative Restriction Agreements in Antidumping Cases

Under current law, the Department of Commerce may suspend a countervailing duty investigation if the Department reaches an agreement to limit the quantity of imports of the subsidized product with a foreign government. No similar provision exists for suspension of antidumping investigations based on quantitative restriction agreements.

The aim of the antidumping and countervailing duty laws is the same—to eliminate the injury caused by unfair trade practices. It therefore makes sense to allow the quantitative restriction remedy to be used in antidumping as well as countervailing duty cases. We suggest that the Congress amend the law to allow suspension of antidumping investigations based on quantitative agreements with foreign governments, using language similar to section 704(c) of the Tariff Act of 1930 as amended.

9. Require Verification in Section 751(a) Reviews

Congress has recognized that initial dumping and countervailing duty findings, as well as section 751 reviews [6] of those findings, are only as credible as the information upon which they are based. Consequently, in the 1979 Act, Congress required the administering authority to verify information received during all stages of antidumping and countervailing duty investigations.[7]

The Commerce Department's practice, however, is not to verify information in all section 751 reviews. Commerce views verification in section 751 reviews as discretionary. Commerce's approach ignores the congressional intent expressed in the 1979 Act and it undermines the vigorous enforcement of the antidumping and countervailing duty laws. It makes no sense to require detailed verification of all information submitted by foreign producers to determine whether less than fair value sales have taken place initially but not require such verification when the agency actually assesses dumping duties.

In our view, the law is clear: verification is required for every section 751 review. We recommend that Congress reiterate this understanding in appropriate statutory or report language.

10. Amendment of 1916 Act

Title VII of the Tariff Act of 1930 is not designed, and is unlikely to be amended, to provide for compensation to an industry injured by unfair trade practices. Title VII's provision of only prospective relief for a domestic industry does not deter unfair behavior by foreign producers and does not compensate the parties injured by unfair trade practices. We believe that a workable private remedy for dumping is needed to supplement the remedies available under Title VII. Amendments to the 1916 Act are necessary to deter unfair trade practices and compensate victims of those practices.

The Antidumping Act of 1916 was intended to provide a private remedy for damages sustained from unfair pricing practices. Unfortunately, the 1916 Act is unenforced and unenforceable. The major problems with the 1916 Act are the requirements to prove specific intent to injure a U.S. industry and the criminal penalties that stem from a finding of that intent.

We believe that the 1916 Act should be amended to, among other things, eliminate (1) the requirement of establishing intent to injure a U.S. industry and (2) the imposition of criminal penalties. We support, in principle, the bills introduced by Senators Spector and Mathias, now pending before the Senate Judiciary Committee.

Conclusion

Mr. Chairman, I have one further concern. In the course of your hearings you will receive numerous recommendations for legislative changes, many of which you will not adopt. In the past, the Commerce Department has argued that a failure by Congress to change the law on a particular issue means that Congress has ratified the administrative agency's practice concerning that issue. In fact, in recent litigation concerning the exporter's sales price issue, the Commerce Department's counsel argued that Congress endorsed the ESP offset because the 1979 Act did not prohibit its use. Commerce's lawyers pointed to a General Accounting Office report that discussed the ESP offset and argued that Congress was on notice of the offset through the GAO report and failed to do anything about it. Amazingly enough, the judge hearing the case agreed with Commerce's contention and indicated that congressional failure to enact legislation outlawing the practice was tantamount to legislative approval.

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[6] Tariff Act of 1930, as amended.

[7] *See, e.g.*, section 776 of the Tariff Act of 1930, as amended.

I urge you not to allow the agencies and the courts to misinterpret any action you take on trade legislation in the 98th Congress. I respectfully suggest that you make clear in the legislative history that inaction by Congress on any issue affecting current administrative practice does not indicate congressional approval of, or acquiescence in, that practice.

Thank you very much for the opportunity to testify. The members of the Specialty Steel Industry of the United States and our counsel stand ready to work with the members of the Subcommittee and your staff to make the trade laws more efficient and effective.

I would be pleased to answer any questions you may have.

EXHIBIT A

NAMES AND LOCATIONS OF THE FIRMS REPRESENTED IN THE SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

The Specialty Steel Industry of the United States is a nonprofit corporation and trade association representing 17 domestic producers of tool and stainless steel. These producers, all of whom are parties to this proceeding, account for about 90 percent of U.S. production of specialty steel products. The names and addresses of these producers are as follows:

Allegheny Ludlum Steel Corporation
2000 Oliver Building
Pittsburgh, PA 15222

Al Tech Specialty Steel Corporation
P.O. Box 152
Dunkirk, NY 14048

Armco Inc.
P.O. Box 1697
Baltimore, MD 21203

Braeburn Alloy Steel Division
Continental Copper & Steel Ind., Inc.
Lower Burrell, PA 15068

Carpenter Technology Corporation
P.O. Box 662
Reading, PA 19603

Columbia Tool Steel Company
Lincoln Highway & State Street
Chicago, IL 60411

Colt Industries, Inc.
Crucible Materials Group
P.O. Box 88
Pittsburgh, PA 15230

Cyclops Corporation
Cyclops Building
650 Washington Road
Pittsburgh, PA 15228

Eastmet Corporation
Eastern Stainless Steel Division
P.O. Box 1975
Baltimore, MD 21203

Electralloy Corporation
51 West 51st Street
New York, NY 10019

Guterl Special Steel Corporation
695 Ohio Street (P.O. Box 509)
Lockport, NY 14094

Jessop Steel Company
Washington, PA 15301

Jones & Laughlin Steel
Incorporated
3 Gateway Center
Pittsburgh, PA 15263

Joslyn Stainless Steels
2400 Taylor Street, West
(P.O. Box 630)
Fort Wayne, IN 46801

Latrobe Steel Company
Latrobe, PA 15650

Republic Steel Corporation
410 Oberlin Avenue, S.W.
Massillon, OH 44646

Washington Steel Corporation
Washington, PA 15301

EXHIBIT B

SPECIALTY STEEL INDUSTRY OF THE UNITED STATES
Suite 308 / 1055 Thomas Jefferson Street, NW / Washington, D.C. 20007 (202) 342-8450

CHRONOLOGY OF SPECIALTY STEEL IMPORT ACTIONS

1973:	Filed and won antidumping cases against French stainless steel wire rods and Swedish stainless steel plates.
1975:	
July 16	American specialty steel producers and the United Steelworkers of America filed a petition under the "escape-clause" provisions of the 1974 Trade Act seeking relief from a flood of steel imports, which threatened the future of the American specialty steel industry and the security of specialty steelworkers' jobs.
October 28-31	Public hearings held by the U.S. International Trade Commission.
1976:	
January 16	International Trade Commission determined imports have been a "substantial cause of serious injury" to the domestic specialty steel industry; the Commission recommended quantitative limitations.
June 14	Import limitations on certain specialty steels (tool steels; stainless steel sheet, strip, plate, bar and wire rod) went into effect. Ford Administration negotiated an agreement with Japan and set quantitative limitations on other foreign nations which declined to negotiate. Import limitations for each year -- beginning June 14 -- set as follows: 1976 - 147,000 tons 1977 - 151,500 " 1978 - 155,900 "
1977:	
May 24	President Carter announced plans to review the specialty steel import-restraint program.

1977: (continued)

September 7	International Trade Commission held public hearings; subsequently, recommended extension of restaints.

1978:

January 18	President Carter issued decision to maintain restraints on specialty steel imports for duration of initial three-year period.
November 30	Specialty steel industry and United Steelworkers of America jointly filed for three-year extension of existing import restraints.

1979:

March 6	International Trade Commission held public hearings and, subsequently, recorded a tie (2-2) vote on whether to extend import restraints.
June 12	President Carter directed that specialty steel limitations be phased out over eight-month period; all import restraints to be lifted beginning February 14, 1980.

1980:

February 13	Specialty steel import limitations expired.
February 15	USWA and Specialty Steel Industry of the United States requested Administration to include all specialty steels in Trigger Price Mechanism (TPM).
March 21	Administration suspended TPMs for all steel products prior to any action to cover specialty steels.
July 31	USWA and Specialty Steel Industry of the United States urged President to take action to restrain imports, noting that specialty steel imports increased 29% in the first five months of 1980 vs. 1979 - with some key products up more sharply.
September 30	USWA and Specialty Steel Industry requested President Carter to include specialty steels in Trigger Price Mechanism (TPM) -- which the Administration was to restore for carbon steels October 21, 1980.
November 10	Department of Commerce sent report about specialty steels to President Carter.

1981:

January 8	Department of Commerce established "surge mechanism" to restore dumping and other unfair import practices affecting specialty steels.
December 2	USWA and Specialty Steel Industry stated that the "surge mechanism" has proved ineffective and filed "Section 301" case with Office of the United States Trade Representative. The action cites massive government subsidies to foreign specialty steel producers in Austria, Belgium, Brazil, France, Italy, Sweden, and the United Kingdom.

1982:

January 12	USWA and Specialty Steel Industry filed with USTR additional information about subsidies - setting this date (1/12/82) as official date of "Section 301" case.
February 17	Countervailing-duty petition filed with Commerce Department by eight specialty steel producers covering stainless bar and rod products from Spain.
March 1	USTR accepted "Section 301" petition to curb unfair specialty steel imports from Austria, France, Italy, Sweden, and the United Kingdom. Petitions against Belgium was not accepted; but, USTR expressed interest in further subsidy information for review. Petition against Brazil was not accepted because this nation has agreed to discontinue its export subsidies.
April 12	Specialty Steel Industry of the United States filed new evidence of Belgian-government subsidization and requested USTR to undertake an investigation under "Section 301".
April 14	USTR held public hearings regarding "Section 301" petition against Austria, France, Italy, Sweden, and the United Kingdom.
April 23	Antidumping petition filed with Commerce Department by eleven specialty steel producers and United Steelworkers of America covering stainless steel sheet and strip products from West Germany.
May 5	Specialty Steel Industry called upon Congress to enact legislation requiring quantitative limitations on specialty steel imports for five years.

1982: (continued)

May 10	Antidumping petition filed with Commerce Department by eleven specialty steel producers and USWA covering stainless steel sheet and strip products from France.
May 13	USWA and Specialty Steel Industry sent letter to President Reagan requesting personal meeting with him regarding specialty steel crisis.
June 3	ITC issued unanimous preliminary finding that the domestic workers and industry have been injured by imports of stainless steel sheet and strip products from West Germany (antidumping case) and stainless bar and rod products from Spain (countervailing duty case).
June 16	Seven specialty steel companies filed countervailing duty case with Commerce Department covering stainless bar and rod from Brazil.
June 17	USWA and Industry sent second letter requesting meeting with President Reagan.
June 18	ITC issued unanimous preliminary finding that five French companies are injuring American industry and workers with imports of stainless sheet and strip products (antidumping case).
June 23	USWA and Industry filed petition with USTR under Section 301 charging Belgium with subsidizing specialty steel for U.S. market.
July 30	USWA and Industry filed two trade cases covering tool steel with Commerce Department: a countervailing duty case against Brazil and an antidumping case against West Germany.
July 31	ITC issued unanimous finding that domestic workers and industry have been injured by imports of subsidized Brazilian stainless bar and rod.
August 6	Industry, shocked and disappointed, rejected proposed settlement of trade issues with EEC negotiated by Commerce Department.
August 9	USTR accepts "Section 301" petition charging Belgium with subsidizing specialty steel for U.S. market.
September 13	ITC issued unanimous findings that U.S. workers and industry have been injured by imports of tool steel from Brazil (countervailing duty case) and West Germany (antidumping case).

1982: (continued)

October 7	Industry filed countervailing duty case with Commerce Department covering stainless flat rolled steel from the United Kingdom.
November 15	Commerce found Spain subsidizing stainless bar and rod shipments to the United States.
November 16	Responding to the industry/union 301 petition, President Reagan directed (1) an expedited 201 investigation with respect to stainless plate, rod, bar, sheet, and strip and tool steel; (2) multilateral and/or bilateral discussions aimed at eliminating trade distortional practices; and (3) monitoring of imports of specialty steels subject to the 201 investigation.
November 22	ITC issued preliminary unanimous finding that flat rolled products from United Kingdom are injuring American industry and workers (antidumping case).
November 30	Commerce Department preliminarily found West German steel companies dumping stainless sheet and strip in the U.S.
December 29	Commerce Department preliminarily found Brazil subsidizing tool steel shipments to the U.S.

1983:

January 10	Commerce Department preliminarily found West German steel companies dumping tool steel in the U.S.
January 27	Commerce Department suspends investigation of subsidized Brazilian stainless bar and rod under terms of suspension agreement with the Government of Brazil.

Chairman GIBBONS. Mr. Sheehan.

STATEMENT OF JOHN J. SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA

Mr. SHEEHAN. Thank you, Mr. Chairman. At the outset let me say that our union considers international trade as only one of the important policy problems confronting American steel and its related industries. It must, however, be considered in terms of an overall economic policy which is designed to promote growth in the economy and maintain a high job level.

A trade policy must, therefore, relate both to an economy which might be experiencing severe cyclical downturns and to a growth economy in which the domestic industry is being inhibited from engaging in accelerated adjustment. While this is not the place to dwell upon other nontrade issues, let me simply say that we believe that the time has long since come for the tripartite development of a national steel policy to be reinstalled in order to address interrelated problems, thereby laying the foundation for a productive and competitive industry which provides secure jobs and a healthy steel community.

The recently negotiated 3-year steel contract in which our members made significant economic concessions amounting to some $3 billion, is only one step, albeit an important one, toward the goal of a healthy steel industry.

Responsible public policy initiatives must also be undertaken to provide the proper framework within which true recovery can occur. In this respect, the real question is whether there will be a responsive national economic recovery policy to sustain jobs and production. But, there must also be a realistic trade policy. Unfortunately, these two domestic policies are not interrelated.

It is true that trade policy has its own internal disciplines, including antisubsidy, antidumping, and escape clause procedures. Certainly the passage of the 1979 Trade Act was a major reorganization of these disciplines. As a result, the carbon steel industry was able to successfully petition against certain unfairly traded steel imports.

It is precisely for that reason, Mr. Chairman, that our union did not support any steel specific import relief legislation in the last Congress, and we have not endorsed any quota bills introduced in this Congress. A full and vigorous implementation of our trade laws should insure the steel industry against unfair trade penetration particularly if, as we indicate below and as many other witnesses are testifying before you, legislation is enacted to tighten up and improve the various procedural mechanisms of the law. We have maintained that the American steel industry is cost-competitive in the market and therefore we should get at unfairly traded imports.

I would like to make brief reference to a few things. One has to do with when a cyclical downturn occurs, where are we with trade policy? The figures I am so familiar with are in steel. In steel, we had a downturn in steel imports during this period of time of about 16 percent. But production dropped 31 percent of steel. Now, steel imports did not share in the decrease of our market, and you see here, then, the development of a grave concern, the jobs are stolen by imports because the imports are not reflecting the downturn in demand in our economy. I must say, Mr. Chairman, that that creates enormous political, if you wish, enormous emotional reaction back home when the downturn is not shared.

Therefore, the perception that our trade policy is not working, it just develops overnight. We always adhered to the prospect that a freer reciprocal trade policy promotes growth. It is the basis on which the country has entered into this trade policy. Our post-war experience of providing expanding trade possibilities has undoubtedly substantiated that objective. We have come out very well during a growth period with a freer trade policy.

While it is not clear that a freer trade policy has prevented or moderated economic declines, it does seem clear that our trade policy is not able to adjust in declining circumstances. The perception that jobs are being lost, of course, is more pronounced at a time when the plant shuts down with massive layoffs.

Advocates of the current trade policy necessarily point to the national economic policy as the root of the unemployment problem, or insist that we must point to violations of the trade law for relief. That is all very understandable, but equally valid is the fact that the current open trade policy does not fare well in a declining economy since it was designed for an expanding economy.

Hence, therefore, Mr. Chairman, we have recommended that the Congress and the committee establish some kind of a cyclical import adjustment mechanism to assure equity and responsibility in our trade relationships.

Now, the second point, Mr. Chairman, that I would like to make this morning, and I would like to highlight it by saying that we would like to emphasize this particular discussion I am going to enter into here.

It has to do with an industry undergoing restructuring changes. It's a well-accepted and, as we all know, strongly recommended fact, that the American steel industry must and is now undergoing major structural changes both in terms of capacity replacement and, unfortunately, retrenchment. Companies are shutting some of their facilities down.

We are not alone in this process. European steel mills are at least facing the problems of overcapacity and subsidization, and are also engaging in restructuring processes.

Even the Japanese are engaged in a major reduction of their overall steel capacity. However, the Europeans and others are able through governmental authorities to establish a hiatus period of import stability during the restructuring phase, which includes bilateral arrangements with their trading partners, Third World countries have developed import insulation techniques to protect their growing steelmaking capacity.

Despite the fact that other countries are able to adjust their trading policies to sharp fundamental changes occurring within their industrial base, the U.S. trade policy seems ill equipped to respond to similar challenges. I make reference in this statement, Mr. Chairman, to the foreword in the most recently negotiated accords with the EEC and the United States on the steel arrangement. I think just reading this points out some of the interesting concepts that the Europeans have reached and accepted. It starts like this:

> Recognizing the policy of the Common Market of restructuring its steel industry including the progressive elimination of State Aids Code; recognizing also the process of modernization and structural change in the United States of America; recognizing the importance as concluded by the OECD of restoring the competitiveness of the OEDC steel industries; and recognizing, therefore, the importance of stability in trade and in certain steel products between the Common Market and the United States. The objective of this arrangement is to give time to permit restructuring and to create a period of trade stability.

That is a most remarkable declaration. Yet despite the fact that the Europeans were able to respond to this situation, our Government, before it could act, had to await the successful challenge by the U.S. producers alleging unfair and illegal steel imports. We could not move until we showed there was a violation.

We should instead be able to better relate import levels to special domestic restructuring needs. Of course, such adjustments must be temporary in nature and include a commitment by the effected industry to use the hiatus period for accelerated improvement in its productive competitiveness. Such a commitment is part of the steel stretchout of environmental obligations, which is conditioned upon the diversion of abatement expenditures into modernization investments.

Moreover, our recent collective bargaining agreement with the steel industry contractually commits the savings received from wage moderations exclusively to the needs of the existing facilities for capital improvement needed to modernize such facilities or to preserve the working capital needs of such plants.

We recommend, therefore, that our trade laws recognize the need for restructuring adjustment periods and under certain criteria provided specific authority for bilateral arrangement when the industry is engaged in the process of structural changes. Such authority to seek bilateral import restraint agreements should not be conditioned upon an injury test.

Indeed, the process should be self-initiating on the part of the Government upon a determination that a given trade-sensitive industry is undergoing restructuring efforts. It might be appropriate to include this under section 201 of the escape clause.

On March 10, Mr. Chairman, our union testified before the House Steel Caucus in order to recommend this concept of fashioning a trade policy in such a way as to take into consideration the restructuring realities in particular industrial sectors. Under this approach the question of fairness of imports is not being raised. Indeed, not even the high volume of imports might be the problem.

In both of these situations presumably our trade law would be operative. And trade relief would be conditioned upon finding of injury. However, we are advocating a trade restraint conditioned upon a commitment by the domestic industry to accelerate investment in its productive facilities.

The need for import stability during such a period is particularly pronounced in the steel industry where capital formation pressures would be huge.

We are talking about $6 billion a year. Yet it is at the time of an upturn in the economy that such an investment strategy would be appropriate and growth in steel demand could fuel the accumulation of capital. But if that growth is siphoned off by imports and an injury test cannot be made during that period of time, then the opportunity for modernization will be modified or diminished.

Our union recognizes that import relief for relief's sake without violation or without injury is not legislatively possible. However, import restraint tied to a modernization plan is not only legislatively reasonable, it is also a good exercise of public policy initiative. We note that there is much discussion lately about coordinating and adjusting government policies, especially in the trade field, to the emerging high-tech industry. Why should the emerging recapitalization of our smokestack industries be treated differently? Just recently, Senator Heinz announced his intent to develop and introduce an Industrial Revitalization Act "to link meaningful import relief for an injured industry with that industry's preparations of an adjustment plan to solve its other problems." Our trading partners always have exercised governmental authorities, I might say to their interpretation under the GATT rules, to engage in an active trade policy initiative for its restructuring industries. Our presentation this morning endorses these concepts and urges committee development of a new import relief option in our trade laws.

The last point I make, Mr. Chairman, to conclude, is that there are many technical procedural changes that you are going to hear, I am sure, many many times. Witnesses who will be coming forth obviously are those that have practiced trade law. Our union does not practice trade law, Mr. Chairman. We do not and so far I don't think we intend to unilaterally put petitions before the ITC. We may join with industry in this, but it will not come as a result of union initiative because of the enormous cost, and the preparation of that material is beyond the scope of the union.

We do practice a little trade law when we go before the Labor Department for TRA relief, and we have talked to you about some of those problems. But these other witnesses will talk to you about the problems that they are experiencing before the ITC and STR and DOC.

The procedural requirements, we understand, are cumbersome and too costly, and therefore many unfair trade practices are never challenged. The injury is no less even though the cause of the injury is not being tested. So the impression that our trade laws are not fair persists.

Additionally, it is somewhat astounding that when petitions are actually filed under our laws, there arises immediately the cry of protectionism, and all the other faults of the victimized industry and, you might say of the union, are displayed. It's as if the injured party is the violator. No wonder then that the perception continues to prevail that no relief is possible against unfair imports and radical if not dramatic or drastic political changes are being advocated.

We would urge, therefore, Mr. Chairman, that your committee review not only the statutory changes that might expedite the administrative procedures but also whether other policy considerations, which I think I heard you say just earlier this morning, whether other policy considerations have had an inhibiting effect on a stronger enforcement of trade laws already enacted. If we have rules, there should be a clear impression that they will be enforced.

Thank you.

Chairman GIBBONS. Thank you, Mr. Sheehan.

[The prepared statement follows:]

STATEMENT OF JOHN J. SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA

At the outset let me say that our union considers international trade as only one of the important policy problems confronting the American steel and related industries.

It must, however, be considered in terms of an overall economy policy which is designed to promote growth in the economy and maintain a high job level. A trade policy must, therefore, relate both to an economy which might be experiencing severe cyclical downturns and to a growth economy in which the domestic industry is being inhibited from engaging in accelerated adjustment.

While this is not the place to dwell upon other non-trade issues, let me simply say that we believe that the time has long since come for the tripartite development of a national steel policy to be reinstalled in order to address interrelated problems, thereby laying the foundation for a productive and competitive industry which provides secure jobs and healthy steel communities.

The recently negotiated three-year steel contract in which our members made significant economic concessions amounting to some $2.9 billion, is only one step, albeit an important one, towards the goal of a healthy steel industry.

Responsible public policy initiatives must also be undertaken to provide the proper framework within which true recovery can occur. In this respect, the real question is whether there will be a responsive national economic recover policy to sustain jobs and production. But, there must also be a realistic trade policy. Unfortunately, these two domestic policy systems are not interrelated.

It is ture that trade policy has its own internal disciplines, including antisubsidy, antidumping, and escape clause procedures. Certainly the passage of the 1979 Trade Act was a major reorganization of these disciplines. As a result, the carbon steel industry was able to successfully petition against certain unfairly traded steel imports. It is precisely for that reason that our union did not support any steel specific import relief legislation in the last Congress, and we have not endorsed any of the quota bills introduced in this Congress. A full and vigorous implementation of our trade laws should insure the steel industry against unfair trade penetration particularly if, as we recommend below, legislation is enacted to tighten-up and improve the various procedural mechanisms of the law. We have always maintained that the American steel industry is cost competitive in this market and, therefore, in ordinary circumstances, administrative relief should be sufficient to address unfair trade distortions.

However, despite the internal mechanisms for handling unfair imports, trade policy is not coordinated with domestic economic realities. There are three aspects of this problem upon which I would like to comment: cyclical economic downturns, structural industry changes, and procedural reform.

(1) CYCLICAL ECONOMIC DOWNTURNS

U.S. trade policy does not take into consideration the fact that the domestic economy may be experiencing severe cyclical downturns in production and resulting increases in unemployment. This is not necessarily a steel specific problem, but statistics in steel reveal that steel imports as a percentage of apparent consumption rose from 19.1 in 1981 to 22.3 percent in 1982. This increase occurred even though there was some decrease in actual import tonnage. However, because of the ability of other countries to provide help to their steel producers thereby sustaining production levels, imports into our market rose sharply as a percentage of supply. Thus, while domestic steel shipments (production) dropped by 31.2 percent, imports declined by only 16.3 percent. The decrease in imports from 1981 to 1982 from the three trading areas was:

	Percent
Japanese	17.5
European	12.8
Others (including Canada)	8.1

While trade policy should allow our trading partners to share in the growth of our market, they should also be responsible for sharing in its cyclical decline. Otherwise, we have the gross trade distortions and unacceptable unemployment levels that have occurred in the steel market. Efforts on the part of foreign producers to maintain or increase market shares during periods of economic recessions only aggravates unemployment in the host country and further complicates trade relations.

Actually, there is a perception that our trade policy is not working. We have always adhered to the prospect that a freer reciprocal trade policy promotes growth. Our post war experience of providing expanding trade possibilities has undoubtedly substantiated that objective. While it is not as clear that a freer trade policy has prevented or moderated economic decline, it does seem evident that our trade policy is not able to adjust to declining circumstances. The perception that jobs are being lost is, of course, more pronounced at a time of plant shutdowns and massive layoffs. Advocates of the current trade policy necessarily point to the national economy policy as the root of the unemployment problem or resist any trade criticism if the complaints are not based upon actual violation of our trade laws or GATT agreement. Certainly such a position is understandable. But equally valid is the fact that the current open trade policy does not fare well in a declining economy since it was designed for an expanding economy. Hence, Mr. Chairman, we do contend that the perception of unfairness is defensible and hopefully is amenable to legislative adjustment so that a trade policy is an economic tool in both situations of expansion and decline.

We, therefore, urge the Congress, in the current review of trade laws, to establish a cyclical import adjustment relief mechanism to assure equity and responsibility in our trade relationships.

(2) STRUCTURAL INDUSTRIAL CHANGES

It is a well accepted and established fact that the American steel industry is undergoing major structural changes both in terms of capacity retrenchment and facility modernization. We are not alone in this process. European steel mills are at last facing the problems of overcapacity and subsidization and are engaged in a restructuring effort. Even the Japanese are engaged in reducing overall steel capacity. However, the Europeans and others are able, through governmental authorities, to establish a hiatus period of import stability during the restructuring phase, which includes bilateral arrangements with their trading partners. Third world countries have developed import insulation to protect their growing steelmaking capacity.

Despite the fact that other countries are able to adjust their trading policies to sharp fundamental changes occurring within their industrial base, U.S. trade policy seems ill equipped to respond to similar challenges. The recent EEC-USA arrangements specifically remark:

"Recognizing the policy of the ESCS of restructuring its steel industry including the progressive elimination of state aids pursuant to the ECSC State Aids Code; recognizing also the process of modernization and structural change in the United States of America (hereinafter called the "USA"); recognizing the importance as concluded by the OECD of restoring the competitiveness of OECD steel industries; and recognizing, therefore, the importance of stability in trade in certain steel products between the European Community (hereinafter called "the Community") and the U.S.A. The objective of this arrangement is to give time to permit restructuring and, therefore, to create a period of trade stability."

Yet, despite the fact that the Europeans were able to respond to this situation, before it could act our government had to await a successful challenge by U.S. producers alleging unfair and illegal steel imports.

We should instead be able to better relate import levels to special domestic restructuring needs. Of course, such adjustments should be temporary in nature and include a commitment by the affected industry to use the hiatus period for an accelerated improvement in its productive competitiveness. Such a commitment, for instance, is a part of the steel stretchout of environmental obligations which is conditioned on diversion of abatement expenditures into modernization projects. Moreover, our recent collective bargaining agreement with the steel industry contractually commits the savings received from wage moderations "exclusively to the needs of the existing facilities . . . for capital equipment needed to modernize such existing facilities or to preserve the working capital needs of such plants."

We recommend, therefore, that our trade laws recognize the need for structural adjustment periods and, under certain criteria, provide specific authority for bilateral arrangements when an industry is engaged in a process of structural changes. Such authority to seek bilateral import restraint agreements should not be conditioned on an injury test. Indeed, the process should be selfinitiating on the part of the government upon a determination that a given trade sensitive industry is undergoing a restructuring effort. It might be appropriate to include such authority under the Section 201 "escape clause."

On March 10, 1983, our union testified before the House Steel Caucus in order to recommend this concept of fashioning a trade policy in such a way as to take into consideration the restructuring realities in a particular industrial sector. The question of fairness of imports is not being raised. Indeed, it is not even the high volume of imports which might be the problem. In both of those situations, presumably our trade laws would be operative and trade relief would be conditioned upon a finding of injury. However, we are advocating trade restraint conditioned upon a commitment by the domestic industry to accelerate investment in its productive facilities. The need for import stability during such a period is particularly pronounced in the steel industry where capital formation pressures would be huge. Yet, it is at the time of an upturn in the economy that such an investment strategy would be appropriate and growth in steel demand could fuel the accumulation of capital. But if that growth is siphoned off by imports and an injury test cannot be met, then the opportunity for modernization will be modified or diminished. Our union recognizes that import relief for relief sake without violation or without injury is not legislatively possible. However, import restraint tied to a modernization plan is not only legislatively reasonable, it is also a good exercise of public policy initiative. We note that there is much discussion lately about coordinating and adjusting government policies, especially in the trade field, to the emerging high-tech industry. Why should the emerging recapitalization of our smoke stack industries be treated differently. Just recently, Senator Heinz announced his intent to develop and introduce an Industrial Revitalization Act "to link meaningful import relief for an injured industry with that industry's preparations of an adjustment plan to solve its other problems." Our trading partners always have exercised governmental authorities—under GATT rules—to engage in an active trade policy initiative for its restructuring industries. Our presentation this morning endorses these concepts and urges committee development of a new import relief option in our trade laws.

ADMINISTRATIVE AND PROCEDURAL REFORM

The union does not appear today to address the various procedural changes that are needed to fine-tune the trade laws. We are, of course, aware of the various recommendations made by those who actually filed relief petitions and practiced trade law before the several government agencies. There is no doubt that many of the proposals should be adopted. As experience under the 1970 Trade Act grows, procedural problems become identifiable. Section 201 and Section 301 are being tested as to their effectiveness. We are keenly interested in the special steel case which is combining both these sections in an effort to combat unfair practices. Certainly if the intent of the laws is to prevent unfair and injurious trade, then the mechanism for providing response to these problems needs to be continuously adjusted. It is not our purpose today to address those issues. Frankly, Mr. Chairman, as a union we do not ourselves unilaterally initiate petitions. We have already testified before you with regard to those sections under which we directly petition; namely, the trade readjustment provisions. As you know, we are seeking major changes or I might say, recapture of provisions lost through reconciliation in the last Congress. But the failure of inflexibility of the law to address unfairness in our trade policy does do harm to our members. For that reason we recommend that those legalistic pinch-points preventing decision or inhibiting governmental discretion be alleviated. Although it is not a proposal which is before this Committee, some of the frustrations being experienced with the procedures of the administrative trade relief system have resulted in efforts to provide more swift and punitive damages against dumped imports, through the judicial system. Our union certainly would not object to an improvement of that additional option for relief. Admittedly, again, these cases would be ad hoc ones limited to dumping in which there would be injury. But, our union is looking for a more global response for the restructuring challenge.

Currently, there is another aspect of our trading situation which must be addressed; namely, the over evaluation of the dollar against world currencies. Fred Bergster, foremost authority on a freer trade policy, stated:

"Correction of this problem [over evaluation dollar competing against an undervalued yen] is urgent, but it continues to be ignored by the administration in this country and it's still festering."

If the procedural requirements are too cumbersome or too costly to implement, many unfair trade practices are never challenged. The injury is not less real. And, so is the impression that our trade laws are not fair. Additionally, it is somewhat astounding that when petitions are filed under our laws there arises immediately the cry of protectionism and all the other faults of the victimized industry are decried. It is as if the injured party is the violator. No wonder then that the perception continues to prevail that no relief is possible from unfair imports and no radical if not drastic political changes are being advocated. We would urge therefore, Mr. Chairman, that your Committee review not only the statutory changes that might expedite the administrative procedures, but also other policy considerations which might be inhibiting a stronger enforcement of the laws already enacted. If we have rules, there should be a clear impression that they will be enforced.

CONCLUSION

We believe that the proper amendment of U.S. trade law can help in the recovery of the steel industry and the economy as a whole. However, just as the contract concessions we recently made will not solve the entire problem, neither will trade adjustments. What is required for our industry is an overall national steel policy developed through the tripartite process of industry, labor and government consultations. On the larger scale, we believe that the U.S. economy needs a proper stimulation through public investment in both its economic infrastructure and human capital.

Chairman GIBBONS. Our last member of this panel is Mr. Pendleton.

STATEMENT OF WILLIAM J. PENDLETON, CHAIRMAN, STAINLESS STEEL WIRE INDUSTRY OF THE UNITED STATES, ACCOMPANIED BY DAVID A. HARTQUIST, COUNSEL

Mr. PENDLETON. Thank you, Mr. Chairman and members of the subcommittee. I am William J. Pendleton. I am director of corporate affairs for Carpenter Technology Corp. and chairman of the Stainless Steel Wire Industry of the United States.

I am appearing before the subcommittee today on behalf of the Stainless Steel Wire Industry of the United States, which is a trade association consisting of 13 domestic manufacturers of stainless steel wire. I wish to highlight the points in my full statement and I ask the full statement be included.

Chairman GIBBONS. Certainly. Let me say that all the statements from the witnesses will be included in the record.

Mr. PENDLETON. Let me say up front, I think there have been some excellent remarks made by all the witnesses here, and let me say on behalf of the stainless steel wire industry that we are not looking for protectionism. What we are looking for is protection of our fair trade laws. Let's establish that right up front.

I think there is a clear distinction between that and trade protectionism, though there has been a lot of glibness about free trade. What we are looking for is protection of our legal system and our fair trade system.

The Stainless Wire Association was formed in the early seventies expressly for the purpose of seeking remedies from unfair international trade in stainless steel wire. Our quest for fair trade is the sole purpose and activity of the association.

In general, I would say that our trade laws were vastly improved by the Trade Agreements Act of 1979, but they are still difficult for an industry to effectively use. The time period required for preparation, filing, and actual prosecution of a case is still extremely long. Further, the remedial action is only prospective and even then often diluted.

I think this relates back to Dr. Lena's recommendation, the damages should relate back to the time of injury. If foreigners injure you, it takes time to collect the information, to pull your case together. The burden of proof is on you.

You file the case, and it is up to a year before you receive relief, and then it is only prospective except for some retroactivity to the time of preliminary finding by the Commerce Department. This is extremely frustrating for any domestic industry.

The bottom line is that the trade laws need to be further streamlined and strengthened, and we endorse the recommendations made by the other witnesses here this morning.

The stainless wire industry has pursued a broad range of remedies under our trade laws for the injury this industry has suffered over the years.

In 1975 we sought escape clause relief under 201, but the causation standard used by the ITC—International Trade Commission—to establish "serious injury" is so high that in the eyes of the Commission even the severe injury we were suffering at that time was insufficient to justify relief. This relates to statements made by Dr. Lena in his testimony. It is our recommendation that our section 201 causation standard be reduced to match that sanctioned by GATT.

The loss of a section 201 case because of this high standard of proof can be disastrous for an industry, not only in the short-term lack because of immediate remedial action, but also because of its negative impact on possible future actions. The unfortunate net effect of our unsuccessful section 201 case in 1976 was to permit the foreign stainless wire producers to establish, through unfair trade practices, historically high import penetration levels against which our future cases must now be measured in terms of the "increasing imports" test required under all our fair trade cases.

You see the dilemma we have been boxed into in terms of the stainless steel wire industry and the increasing imports test that we must absolutely meet in any injury determination and now it is broadened in the countervailing duty case, which implies the increase in imports test to that situation, and we endorse the recommendation to eliminate the injury test on the countervailing duty case.

In 1978 we filed an antidumping case against imports of stainless round wire from Japan. The International Trade Commission found that there was a reasonable indication of injury by reason of imports from Japan. However, at the request of the Government, we withdrew the antidumping petition in return for coverage of stainless wire under the trigger price mechanism.

Our industry's experience under the on-again, off-again trigger price mechanism has been a checkered one at best. We are now the only industry whose products are covered by the trigger price mechanism. We have experienced some temporary decline in import penetration, although this has remained extremely high in the smaller diameter of the wire range of our industry group.

I might add we still feel that the TPM has serious shortcomings. I might add that again we are measuring increasing or decreasing import penetration against what we feel was an established unreasonably high level of import penetration because we lost our 201 case and that more or less sanctioned a high-level import penetration back in the midseventies. Now everything we file has to be measured against that high import penetration level.

All they have to do is continue the unfair trade practices as they have done back in the seventies and it is essentially sanctioned by our trade laws. We feel the burden should be on the foreigners to prove, as we mentioned before, that they are not injuring the domestic industry by their practices. It's the reverse. The burden is on the domestic industry, and it is extremely frustrating, Mr. Chairman and members of the committee.

Our industry—going back to the TPM, I do have a white paper which describes the deficiencies in the TPM coverage of stainless steel wire. I won't go into detail other than to say we see defective base prices, defective relationships between various grades of stainless wire, and certain other aspects that are well spelled out in our white paper that I will submit for the record.

Now, let me emphasize here that our industry is technically and cost competitive. We are not talking about a deficient industry as in the case of other industries who have had trade problems and some who have talked here this morning.

We serve a wide variety of markets including high technology markets. In the past 5 years the domestic stainless wire producers have increased productivity, introduced technological innovation, and expanded where possible. We are competitive but nonetheless we have been severely hurt by imports.

I hope that puts to rest the glib comments that we hear: "All you have to do is to be more competitive and your fair trade problems go away." Mr. Chairman, members of the committee, that is not true. I think the stainless wire industry and other industries are an example of that.

It is clear to our people that the U.S. trade laws have not provided relief from dumped and subsidized exports to the United States. Many changes are needed in the trade laws and many of the recommendations have been discussed here this morning.

In addition, we would like to highlight another amendment of particular interest to the domestic producers of stainless steel wire. This would be an amendment to title VII of the Tariff Act of 1930, which would allow antidumping and countervailing duty cases to be brought directly against dumped and subsidized downstream products. We are seeing finished products made from stainless steel wire such as fasteners, wire mesh, and wire rope entering the United States at prices which are below the cost of producing the wire alone, the raw material itself.

Such practices are undermining the U.S. stainless wire producers as well as our customers, the producers of the finished product. Yet under our current laws our hands are tied and we are unable to pursue a remedy directly in unfair trade practices. We recommend an effective amendment to the antidumping and countervailing duty laws that would grant standing to producers of the components of raw materials or end-use products as well as producers of the end-use products themselves.

Second, we would require the Commerce Department to determine whether foreign producers subject to an investigation were receiving the benefits of subsidization or were buying raw materials or components at dumped prices. We know this is going on. We know that the foreigners—the Japanese and others—prefer to downstream their products, sell at below cost and subsidize the price to the fastener producers and wire mesh and wire rope so they can ship the fabricated steel articles over here because they know the trigger price mechanism applies.

Changes must be made to our trade laws. This is the time to do it.

The Stainless Steel Wire Industry of the United States is committed to pursuing a fair trade environment in the United States. Without effective trade laws and concomitant remedies, fair trade cannot be achieved, and we are talking about competitive domestic industries. We applaud the efforts of this subcommittee and offer our full support and cooperation. Thank you.

[The prepared statement follows:]

STATEMENT OF WILLIAM J. PENDLETON, CHAIRMAN, STAINLESS STEEL WIRE INDUSTRY OF THE UNITED STATES

SUMMARY

The Stainless Steel Wire Industry of the United States is a trade association of domestic manufacturers of stainless steel wire. The association was formed in the early 1970's expressly for the purpose of seeking remedies from unfair international trade in stainless steel wire.

Over the years this industry has pursued a broad range of remedies for the injury it has suffered as a result of the unfair trading practices of our foreign competitors. In 1975 we sought escape clause relief under section 201, but the causation standard used by the International Trade Commission to establish "serious injury" is so high that, in the eyes of the Commission, even the severe injury we were suffering at that time was insufficient to justify relief. The loss of a section 201 case because of this high standard of proof can be disastrous for an industry, not only because of the short term lack of immediate remedial action, but also because of its negative impact on possible future action. The unfortunate net effect of our unsuccessful section 201 case in 1976 was to permit the foreign stainless wire producers to establish, through unfair trade practices, historically high import penetration levels against which our future cases must now be measured in terms of the "increasing imports" test.

Our industry's experience under the on-again, off-again Trigger Price Mechanism, has been a checkered one at best. The Trigger Price Mechanism has several serious shortcomings, including the failure to reflect inflationary effects upon costs of production, anomalous trigger prices which contradict certain inescapable relationships of the cost of production among the various types of wire, and base prices that are too low to reflect actual cost.

An amendment which is of particular interest to the domestic producers of stainless steel wire would be an amendment to Title VII of the Tariff Act of 1930, which would allow antidumping and countervailing duty cases to be brought against dumped and subsidized "downstream" products. An effective amendment to the antidumping and countervailing duty laws which would provide redress for downstream unfair trade would:

1. grant standing to producers of the components or raw materials of end-use products, as well as the producers of the end-use products; and
2. require the Commerce Department to determine whether foreign producers subject to an investigation were receiving the benefits of subsidization or were buying raw materials or components at dumped prices.

Without effective trade laws and concomitant remedies, fair trade cannot be achieved.

STATEMENT

Mr. Chairman and members of the Subcommittee:

My name is William J. Pendleton. I am Director of Corporate Affairs for Carpenter Technology Corporation and Chairman of the Stainless Steel Wire Industry of the United States. I am appearing before the Subcommittee today on behalf of the

Stainless Steel Wire Industry of the United States, which is a trade association consisting of thirteen domestic manufacturers of stainless steel wire. A list of the member companies is attached to my prepared testimony as Exhibit A.

This association was formed in the early 1970's expressly for the purpose of seeking remedies from unfair international trade in stainless steel wire. Our quest for fair trade is not merely the focus of our association's efforts, it is the sole purpose and activity of the association. Consequently, I am especially pleased to have this opportunity to testify before the Trade Subcommittee.

In general, I would say that our trade laws were vastly improved by the Trade Agreements Act of 1979, but they are still difficult for an industry to effectively use. The time period required for preparation and filing and for the actual prosecution of a case is still extremely long. Further, the remedial action is only prospective and, even then, often diluted. The trade laws need to be further streamlined and toughened.

Over the years, we have pursued a broad range of remedies for the injury this industry has suffered as a result of the unfair trading practices of our foreign competitors. In 1975 we sought escape clause relief under section 201, but the causation standard used by the International Trade Commission to establish "serious injury" is so high that, in the eyes of the Commission, even the severe injury we were suffering at that time was insufficient to justify relief. I should add that the required standard of injury under section 201 is substantially tougher than is required under the escape clause provisions of the General Agreements on Tariffs and Trade. We recommend that our section 201 causation standard be reduced to match that sanctioned by GATT.

The loss of a section 201 case because of this high standard of proof can be disastrous for an industry, not only because of the short term lack of immediate remedial action, but also because of its negative impact on possible future actions. The unfortunate net effect of our unsuccessful section 201 case in 1976 was to permit the foreign stainless wire producers to establish, through unfair trade practices, historically high import penetration levels against which our future cases must now be measured in terms of the "increasing imports" test. This is the real and insidious danger in having too high a causation standard in section 201 cases. For example, import penetration of small diameter stainless wire is currently about 40 percent of the U.S. market. We feel this level is too high and is unjustified on a true competitive basis, yet it is now approximately the historical reference point against which the statutory test of "increasing imports" must be measured in future cases.

In 1978 we filed an antidumping case against imports of stainless round wire from Japan. The International Trade Commission found that there was a reasonable indication of injury by reason of imports from Japan. However, at the request of the Treasury Department, which then administered the antidumping and countervailing duty laws, we withdrew the antidumping petition in return for coverage of stainless wire under the Trigger Price Mechanism.

Our industry's experience under the on-again, off-again Trigger Price Mechanism has been a checkered one at best. We are now the only industry whose products are covered by the Trigger Price Mechanism. We have experienced some temporary declines in import penetration under the Trigger Price Mechanism although import penetration has remained unreasonably high in the smaller diameter wire range. In addition, as mentioned previously, we feel that the historical base level for stainless wire imports was allocated to be established at an unjustifiably high level because of weakenesses in our trade laws.

The Trigger Price Mechanism has several serious shortcomings, including the failure to reflect inflationary effects upon costs of production, anomalous trigger prices which contradict certain inescapable relationships of the cost of production among the various types of wire, and base prices that are too low to reflect actual cost. In addition, foreign producers began frequently and flagrantly violating trigger prices when it became clear that the Department of Commerce would not take effective action to enforce the Trigger Price Mechanism. A White Paper regarding Trigger Price Mechanism coverage of stainless wire and a chronogoloy of our experiences with unfair trade remedies is attached to my prepared testimony as Exhibit B.

Our industry is technically and cost competitive and serves a wide variety of markets, including high technology markets. In the past five years the domestic stainless wire producers have increased productivity, introduced technological innovation and expanded where possible. We are competitive, but, nonetheless, we have been severely hurt by unfair imports.

It is clear to the domestic stainless wire producers that the U.S. trade laws have not provided relief from dumped and subsidized exports to the United States. Many changes are needed in the trade laws if domestic producers are to have effective remedies available. One such amendment which is of particular interest to the domestic producers of stainless steel wire would be an amendment to Title VII of the Tariff Act of 1930, which would allow antidumping and countervailing duty cases to be brought against dumped and subsidized "downstream" products. Under our present laws, downstream dumping and subsidization are not subject to the antidumping and countervailing duty remedies, therefore allowing foreign fabricators to circumvent U.S. trade laws by selling finished products containing raw materials or components purchased at below cost or at subsidized prices. As a result of this loophole, we are seeing finished products made from stainless wire, such as fasteners, wire mesh and wire rope, entering the United States at prices which the below the cost of producing the wire alone. Such practices are undermining the U.S. stainless wire producers, as well as our customers, the producers of the finished product. Yet under our current laws, we are unable to pursue a remedy directly.

An effective amendment to the antidumping and countervailing duty laws which would provide redress for downstream unfair trade would:

1. Grant standing to producers of the components or raw materials of end-use products, as well as the producers of the end-use products; and
2. Require the Commerce Department to detemine whether foreign producers subject to an investigation were receiving the benefits of subsidization or were buying raw materials or components at dumped prices.

The Stainless Steel Wire Industry of the United States is committed to pursuing a fair trade environment in the United States. Without effective trade laws and concomitant remedies, fair trade cannot be achieved. We applaud the efforts of this Subcommittee and offer our full support and cooperation.

Thank you.

EXHIBIT A

STAINLESS STEEL WIRE INDUSTRY OF THE UNITED STATES

AL Tech Specialty Steel Corporation (NY);
ARMCO, Inc, (MD);
Branford Wire Manufacturing Company (NC);
Brookfield Wire Company, Inc. (MA);
Carpenter Technology Corporation (PA);
Crucible Specialty Metals Division, Colt Industries, Inc. (NY);
Industrial Alloys, Inc. (CA);
Mapes Piano String Company (TN);
Maryland Specialty Wire (MD);
National Standard Company (MI);
Northampton Manufacturing Company (MA):
Techalloy Company, Inc. (PA); and
Willing B Wire Corporation (NJ).

EXHIBIT B

STAINLESS STEEL WIRE INDUSTRY OF THE UNITED STATES

WHITE PAPER

The Stainless Steel Wire Industry of the United States has suffered an onslaught of unfairly traded imports of stainless steel wire. These imports are often dumped and/or subsidized by foreign governments. Such trade is illegal under U.S. law, contrary to obligations under international agreements, and causes severe harm to U.S. workers, firms and the U.S. industrial base generally.

The Trigger Price Mechanism (TPM)—now in its third generation—covers imports of stainless steel wire. The TPM was reimplemented to "permit the Department [of Commerce] to ascertain expeditiously whether sales are occuring at prices which are likely to constitute sales at less fair value under the antidumping law or are the result of unfair subsidization." (47 Fed. Reg. 16,820 (1982)) Despite frequent sales of imported stainless steel wire below trigger prices, the Department of Commerce has not initiated any investigations to determine whether these below-trigger sales are violations of U.S. antidumping or countervailing duty laws. As a result of the Department's nonenforcement, many importers feel they can sell below trigger prices with impunity.

THE TPM CAN AND SHOULD BE ENFORCED

The Department of Commerce has the authority and the means through its statutory authority and the information gathered under the TPM to enforce the unfair trade laws on imports of stainless steel wire. Questionnaires sent by the Department in response to sales below trigger or suspected sales below trigger provide substantial information regarding the circumstances of sale of these imported products. In addition, the domestic industry has been and will continue to provide the fullest cooperation in gathering all available information regarding the market, sales, cost of production and injury to the domestic firms.

Given the present information available to the Department and the continuing TPM violations, continued nonenforcement is inexcusable and serves to contribute to the harm suffered by U.S. producers.

THE TPM SHOULD BE MODIFIED

The Stainless Steel Wire Industry has worked closely and continually with officials in the Department of Commerce to aid in the effective administration of the TPM. The members of this industry have gone to great lengths to be very forthcoming with costs, production and market information. Nonetheless, the Department of Commerce has been unable or unwilling to adopt some necessary modifications to TPM product coverage. Some of the most serious concerns which affect domestic producers of stainless wire include the following:

1. BASE PRICES

Base Prices have been too low to reflect actual costs since the second reimplementation of the TPM in October of 1980. The domestic industry brought this to the attention of Commerce officials as early as the fall of 1980. The stainless wire producers have even provided detailed economic analyses of the effects of cost trends on Japanese as well as U.S. producers.

Furthermore, the Department of Commerce has used the price of stainless steel rod imported by Japan which is potentially dumped in determining the TPM base prices. One of the basic assumptions of the TPM is that the Japanese are the most efficient steel producers. Thus, it violates the spirit as well as the rationale of the TPM to use the lower priced imported stainless rod as the "Japanese cost of production" of rod in computing base prices. It is especially egregious when the Japanese have openly recognized and are complaining about the steel dumped in their market.

In addition, there are two particularly low base prices which demand immediate attention. These are grades 430 and 17-7PH®. These base prices are obviously out of line with the world market price and have been for years. The Department of Commerce has been repeatedly informed of this problem, and yet, as of February 1983, no action has been taken to correct this problem.

2. ANOMALIES AMONG PRODUCT CATEGORIES

The relationship between trigger prices among the product categories hard drawn, annealed and intermediate wire fail to reflect differences in production methods. No matter what machines are used or the costs of labor, annealed wire is a soft or malleable wire because it undergoes at least one extra step, i.e. heating. The same is true of intermediate wire, i.e. it is softer than hard drawn wire of the same grade and diameter because it has had an extra heating step added shortly before the last draw. These extra heating steps must, of necessity, include at least an added energy cost. Nonetheless, this basic inescapable relationship among these categories has not yet been fully recognized in the trigger prices.

3. SIZE EXTRAS

The size extras do not yet reflect accurately the proportionately higher cost to draw the finer sizes of wire. As in the case of the relationships among the product categories, it is an inescapable fact that a wire producer must draw fine wire more times than thicker wire to reduce its diameter by the same absolute amount. This proportionately higher cost to draw finer wire is not adequately accounted for by the trigger price size extras.

Moreover, the size extras do not include wire of the finest sizes. For example, the hard spring wire size extras only go down to 0.008 inches, whereas a significant amount of material, especially by value, is produced and sold in finer size ranges. The Department of Commerce must, as a minimum, extend the range of the covered size extras downward to include these fine wire sizes. Otherwise, imported wire in sizes below the TPM covered ranges can enter at ridiculously low prices without even being subject to the TPM.

4. DOWNSTREAMING

Downstreaming is another reaction by foreign producers that has a strong impact not only on the U.S. wire producers but on their customers as well. By adding the capability to produce the products which are made from stainless wire (*e.g.*, wire rope, wire mesh, small fasteners, etc.) foreign producers can export stainless wire to the United States as a finished product in complete disregard of the TPM and at potentially unfair prices.

Although the TPM may not be the right mechanism to control such downstreaming, through the TPM the Department often has sufficient information to show that these downstream products are being dumped at unfair prices. The Department clearly has the authority to take enforcement action against such dumping where it is found.

CONCLUSION

Effective administration of the TPM entails two elements. First, product coverage must accurately reflect and account for costs and activities within the stainless wire market. Where product coverage is inadequate, foreign producers shift their product mix to take advantage of the inadequacies, be they base prices, extras or size ranges. Second, the TPM must be enforced. Without effective enforcement, the deterrent to unfair trade practices is lost.

The Stainless Steel Wire Industry of the United States will continue to work in close cooperation with the Department of Commerce to aid in the effective administration of the TPM. But, the Department of Commerce must also commit itself to effective enforcement actions.

STAINLESS WIRE CHRONOLOGY OF INTERNATIONAL TRADE EVENTS

December 1975.—Domestic producers of stainless round wire filed a Section 201 petition with the International Trade Commission alleging increasing imports of stainless round wire in such quantities as to be a substantial cause of serious injury or threat thereof.

June 1976.—The International Trade Commission determined that the increasing imports of stainless round wire were not of such quantities as to be a substantial cause of serious injury or threat thereof to the domestic producers.

March 1978.—Domestic producers filed antidumping petition against imports of stainless steel round wire from Japan.

July 1978.—International Trade Commission found that there was a reasonable indication that the domestic industry had been injured as a result of imports of stainless steel round wire from Japan.

January 1979.—First generation of the trigger price mechanism implemented covering most carbon steel mill products (not stainless wire); administered by Treasury Department.

May 1979.—Following negotiations with the Treasury Department, domestic producers of stainless wire withdrew antidumping petition against Japan in return for coverage of stainless wire products under the TPM.

January 1980.—Authority over antidumping and countervailing duty provisions transferred from Treasury to the Department of Commerce under the Trade Act of 1979.

March 1980.—U.S. Steel files significant antidumping cases with the Department of Commerce because no action had been initiated by Treasury or Commerce despite alleged TPM violations and unfair trade practices. The TPM was immediately suspended for all products including stainless wire despite the fact that domestic stainless wire producers had not filed or participated in the filing of any petitions. Thus, the domestic producers lost the benefit of both their strong case and the monitoring enforcement system as a result of the TPM suspension. Furthermore, unfair imports of stainless wire had been decreasing under the TPM but rose again following its suspension.

October 1980.—The TPM was reinstated for all products including stainless wire. However, the updated trigger prices for stainless wire failed to fully reflect the inflationary effects upon the costs of "extras" which are a major component of stainless wire production costs and trigger prices.

January 1981—January 1982.—The domestic stainless wire producers energetically pursued modifications in the TPM and increases in trigger price levels and opposed preclearance requests of foreign producers. Although imports of stainless wire again declined under the second generation of TPM, import penetration remained unreasonably high in the smaller size range (below 0.060) and foreign producers began flagrantly violating the TPM with great frequency when it became clear that the Department of Commerce would take no effective action to enforce the TPM or modify stainless wire coverage.

January 1982.—The major carbon steel producers filed over 130 antidumping and countervailing duty petitions. Despite the protests of domestic stainless wire producers, TPM coverge again was suspended for all steel producers. As a result, the domestic stainless wire industry was faced with the same situation it had in 1980—no import monitoring or enforcement system and no cases pending before the international trade regulatory bodies. In addition, imports which are clearly dumped and/or subsidized increased again at alarming rates, making the effects of the general world recession even more injurious.

April 1982.—The Department of Commerce resumed TPM monitoring of imports of stainless steel wire.

September 1982.—Despite resumption of TPM coverage imports and import penetration have increased above the April levels and domestic consumption has plummeted. Moreover, numerous instances of below trigger sales of imports have been reported and found by the Department of Commerce but the Department has not acted to initiate any investigations. Moreover, Commerce has failed to modify certain TPM base prices and extras to reflect actual costs of production.

Chairman GIBBONS. Well, all four of you have made excellent statements. Many of the things you say I agree with, of course. I have been trying to figure out some legislative remedy that we can work out here.

Unfortunately I don't think it is possible for us to attack at one time this far into the Presidential term and congressional session all of the ills—real and some not so real—that people bring before us at these hearings. I am not blaming you or directing it toward you on this panel. I am the one that set the agenda when I opened the hearing and I made it rather broad.

But time does not permit us to tackle all the problems at one time. If I could work out with the people involved and with the Senate an agreement on an agenda we could tackle some of the problems and get relief.

It is obvious in the unfair trade practices law and the administration of those laws we need to give some immediate attention and try to move rapidly.

But if we get hung up with everybody's pet amendment on the House side and on the Senate side we are going to get lost in a protracted battle and we will never get anything done in an area that all of us clearly identify as an area to move on.

While I am only one vote on this committee and only one of 535 on the Hill, I would plead with all of you who have these problems to let us proceed at least on the ones that we can get something approaching a general agreement on, tackle those and get them out of the way without trying to solve every problem in the country on one bill.

Having said that, I want to direct my attention more toward the dumping and the subsidy practices because I think that those are clearly pernicious and I would expand subsidy practices to include targeting. Perhaps they could be the goals that we could accomplish early on this year if we will just keep our fire focused on them.

Now, Mr. Sheehan, that doesn't mean that I am not going to pay attention to the problems you have particularly presented and, also, Mr. Pendleton, but if we get them all involved, if we get them all in one bill we will not make any progress. That is what I would like to work out by way of agreement with the Senate and get a consensus on.

I certainly don't want anyone in the executive branch to interpret that we are blessing all the other things we didn't tackle in this session of Congress as being perfectly permissible.

I think you made a good point a while ago, that sometimes the administration says because we didn't tackle it by legislation it means we blessed it. We obviously have not. Anybody who makes that foolish argument is not familiar with the legislative process as it has been going on for the last hundred years in this country and in most countries.

That is a falacious argument. Perhaps we have neglected not making the legislative history clear in those areas, I agree.

I am anxious to stop the whole process of dumping and the whole process of subsidies and I agree the burden of proof should shift on the injury test.

I believe that that is perhaps placed in the wrong area as far as when there is dumping in a market or a subsidy in a market, I believe that the costs are too high in these areas for you all to have to bear this burden.

Let me say I am not getting much help so far from the administrative agencies and that is no reflection on this administration, about how we can cut those costs and how we can shorten those times. So we will have to depend on you to tell us that, what unnecessary or cumbersome steps there are.

I personally want to review in detail the full statements that you have all submitted to us, and I would be glad to have any of you respond to the observations I have made.

Mr. PEABODY. If I may, Mr. Chairman, since I went first I will take first crack at speaking to your points.

This is a different world that we live in today from what people thought was going to be the case after the end of World War II, certainly——

Chairman GIBBONS. Certainly.

Mr. PEABODY [continuing]. Certainly different from the 1930's. I have expertise in steel and wouldn't purport to go beyond that. Before the end of World War II the steel industries around the world generally were formed by private entrepreneurs and were private shareholder companies. Once you get beyond the United States today and Canada, and there are some exceptions in Canada, you find that the steel industries are Government owned, Government instrumentalities, Government guided after being formed at Government direction.

This is a very, very difficult problem.

It is a difficult problem because our legal and social and economic and political systems have not yet caught up with the reality that exists in steel trade in the world and steel is an internationally traded commodity.

These problems were created under a legal system that was really fundamentally designed to handle private enterprise, single shot litigation. That has been spoken to here, but I really don't think it is generally recognized in the public or for that matter, with deference, in the Congress.

Just a minor point here, it goes to cost. To accumulate the evidence just to commence a proceeding in respect to steel dumping or steel countervailing duty cases is fabulously expensive. There isn't any other word for it. What you have to do is get information which in some countries is a state secret. Let's again live in the real world.

Korea for example, POSCO was formed under a military dictatorship. It is a government instrumentality. It is a social goal of that government. It is a totally completely structured subsidized operation from start to finish founded on government money.

To get in there and get information in a strange language is very difficult.

Around the world, the same: the United Kindom, France, Italy. One of the real problems in this, Mr. Chairman, is getting the facts. We have structured these proceedings as though they were domestic litigation in a U.S. court amongst individual entrepreneurs.

Chairman GIBBONS. That is a good criticism.

Mr. PEABODY. And that just isn't the world we live in.

I think the second point I would make in that respect and then I will let others speak, and again with deference, the executive branch people for 20 years, Congress with deference, for 20 years, has failed to recognize that at least in this commodity that I am most familiar with, there hasn't been free trade in the world. There just has not been.

The GATT system was structured ultimately on a concept of free trade. I don't think anybody should have any allusions, it is trade and commerce that brought this country to the great standard of living we have today. I think that no one in the world would dispute that.

We don't want to live in a subsistence farming economy. It has to have trade and commerce.

But the system was structured on a notion of trade that in steel just simply does not exist. Amongst the foreign countries which produce steel there are many bilateral agreements that go outside the scope of the GATT, that structure and determine who can enter, how much you can enter, what the price will be. That is all superimposed upon a subsidy system, on an economic system that requires for welfare purposes that employees be maintained or, as in the case of Europe, if you are beginning to rationalize and shrinking back, the Government system even subsidizes the severence of the worker.

It is totally different out there. It is totally different outside this country than the case inside this country, the world's biggest freest market. We are ultimately competing with different economic systems. I don't mean centrally planned economies. Nobody would say that the French have a centrally planned economy, or the British or Italians. But, in industrial segments they are government controlled and manipulated and supported and guided and subsidized and they are instrumentalities in one fashion or another designed for social purposes in their country, and we have to compete with them.

It is a very, very, difficult postion that we have in this commodity that is steel. It is the sine qua non of an industrial society to say—there is nothing in this room that wasn't either made of steel or by an instrument of steel. We have to compete in that environment.

There are private enterprise companies competing with world class governments. It is a tough world and we are not getting the aid, support, and comfort from our Government system that is routinely regularly provided to others around the world.

Chairman **GIBBONS**. If you had your wish which environment would you rather live in?

Mr. **PEABODY**. I would rather live here. There is no question with that. With deference——

Chairman **GIBBONS**. I am not talking about where you physically live, I am talking about business environment.

Mr. **PEABODY**. I understand. I feel paranoid. I feel maligned. We want the market economy to work. The problem is the people we compete with offshore are not market economy oriented.

Chairman **GIBBONS**. You know, I have a great sympathy for your position. I think that we can do a pretty decent job for you if we can move ahead on the countervailing and dumping areas right now.

When I am saying that I am talking about reducing the cost, reducing the time, and having a certain remedy, not a negotiated mish-mash at the end. That is what worries me.

Let's go over here and then to you, Jack.

Mr. **LENA**. Mr. Chairman, with respect to the question of where you would like to live, meaning what system you want to operate under, I think all of us would not change our system for any system in the world, not just because of the business opportunities but because of the freedoms it gives us. But I would subscribe to you that what is under attack and under challenge is really our free enterprise system.

Mr. **PEABODY**. Yes.

Mr. **LENA**. And if something isn't done there will be total destruction, not only of steel, but all manufacturing of this country—not segregated by high tech or smokestack. That is because there is no industry that can compete against governments and that is what we are being asked to do.

I submit to you that our whole system is under attack.

Chairman **GIBBONS**. What you meant to say was that no one can compete against unfair Government competition?

Mr. **LENA**. What I am saying is we are being asked to operate under our free enterprise system which doesn't provide subsidies and we are not asking for subsidies. However, we are being asked to compete against not individual producers operating under a system similar to ours, but against the policies of governments.

Chairman **GIBBONS**. We are both making the same point, of course.

What I am in effect saying is that you should be insulated from that kind of subsidy or that kind of unfair practice.

Mr. **LENA**. Right.

Chairman **Gibbons**. Maybe I failed to express myself clearly but that is what I am talking about. I don't think we want one to emulate what they are doing; and two, we don't want to destroy the flexibility and spontaneity that we get from the free marketplace system but we don't want to be overwhelmed by a predatory practice.

Mr. **Lena**. I agree completely with you. This is a complex issue and each industry has its own type of problem. The company that lost the subway car orders because of Government financing more favorable than what it was able to offer, or Boeing losing airplane contracts to nationalized economies and so on—those are different problems than we face in the form of subsidies and dumping.

You have to start somewhere. My concern has developed in terms of the specialty steel industry, frankly. We have several actions we are taking. We have the section 201 case underway now. I believe that the cases will be concluded and we will get some form of relief. That remains to be seen.

My concern is that unless something overall is done in other areas of dumping and subsidies and so on, we are going to end up with a solution to the specialty steel problem and not have very many customers who are faced with the same problem to buy our product.

Chairman **Gibbons**. I see that. What I am saying is that we cannot tackle 201, dumping, countervailing, all at one time and all the other things that are going to be pushed at us. If we can do a good job in dumping and countervailing let us follow that with other matters such as 201 and so on.

If we load it down we will have problems.

Mr. **Pendleton**. I would like to support very much what you say there. I would like to make two points to tie in.

One, in order to make even the laws as they are now effective, plus any changes we can make, the fundamental point is that our Government must have the will to do so. This goes back to your question about the enforcement situation and the will to enforce and why aren't these laws enforced. I think that is what our fundamental problem is. There is not the will in this Government. The perception we in industry have is that there is not the will to enforce the trade laws to the fullest extent.

We have mentioned cases where they have distorted some of the intent of Congress and we feel that has to be corrected, Mr. Chairman—even without any legal changes in statutes, just to make it clear to the administration and the enforcement agencies that the laws are to be enforced and make it clear what your intent is in terms of unfair trade.

I frankly feel the Goverment position is ludicrous almost. We go to meetings sometimes with administration people, I don't care whether it is Democrat, Republican or what administration, and you have to wonder which country these individuals work for because there are foreign policy considerations that have overridden economic and trade considerations.

That has been continuous for the last decade or longer than that. It doesn't change from administration to administration.

I think it must be made clear by the Congress. We recommend the Congress make it clear that trade matters should be considered on their economic merits and not in terms of the foreign policy considerations. I think that has been a high degree of our frustration, no matter what industry you have talking to you.

I think the second point is that we are at a crossroads in terms of our trade policy and protection of our free and fair trade system. There is an opportunity here now—and I think it has to fall back on the Congress—to really make that judgment to enforce our trade laws and make sure that the laws reflect what is the intent of this country.

I think all of us are in favor—I know we are in private industry—in favor of the free enterprise and free trade system. We must correct the trade laws now. I think it has come home during this recessionary period. The impact has been compounded. It has hit all of us. If we don't correct it now we may lose that opportunity, Mr. Chairman.

Chairman GIBBONS. First I want to apologize to my colleague, Mr. Schulze for monopolizing so much time. I am just trying to crystalize my thoughts. I will certainly be as generous with you, Dick.

I think we have sort of reached a consensus within Congress and within the business sector and the labor sector that we need to get at the unfair practices very rapidly.

We need to make sure that the unfair practice remedies are not influenced by political, social or other decisions. There are some things that are just clearcut and they shouldn't be done that way and if we go along the route we have been following we are going to be in a disastrous result situation.

You have been saying that for a long time, and perhaps we have not been talking and listening in the same language, I don't know. But I am saying if we get over to 201 cases where we have not unfair practices but just competitive practices and try to solve all those in the same bill, at the same time that we solve the unfair practices we will probably load up the train with more than it will carry at one time and we won't have the horses to pull it.

There are going to be other wagons and other trains leaving this station. Let's try to tackle a problem, solve it clearly, don't get it all screwed up. We don't need a 700-page bill with thousands and thousands of pages of legislative mish-mash to interpret it. Let's get something solved.

One of the things that I think you need solved quickly are the unfair practices and get remedies for them and get them out of the way, and get help in solving the unfair practices. At the same time before all that becomes effective we can start another train down the road and get the rest of the work done.

Mr. Sheehan, I have been holding you back over there. Go ahead.

Mr. SHEEHAN. The more you have said it helped me think about more things.

Chairman GIBBONS. I never found you lacking in unproductive thoughts. I mean that as a compliment. You go right ahead.

Mr. SHEEHAN. Thank you, Mr. Chairman.

I recognize you are a legislator and the job of a legislator is to be very pragmatic. And there is no doubt as the chairman that there is a responsibility to establish the outer limits of what you can politically probably do.

I would hope that all of us that are enmeshed in this trade problem would try to help you identify the outer limits, perhaps, of what is pragmatically, politically possible. I think that that is a request on your part that ought to be approached and accepted.

Second, the problem of identifying and handling within the scope of that pragmatic situation, namely dumping and the subsidy situations, may itself not be amenable to very clearcut solutions. I think you had indicated earlier that we shouldn't be going down the road too far, otherwise we get lost.

I guess maybe my comment here is that the length of the road that we may have to travel in this Congress is going to be determined by the diversity and the various forms of the subsidy and dumping problem that we may experience.

I think that is the problem, Congressman, it is not so much that we should branch out all around but it is difficult to put your hand on some of the newer forms of what we might want to call "unfair trade."

The union is concerned about this industry having to modernize. Our jobs depend on a more modernized industry. I wonder whether, to a large extent, what we are facing when other countries are restructuring whether this might itself also be a phase of unfair competition that has to be addressed within the rubric which you are laying down of getting at the unfair subsidized and dumped imports.

I think you would have to somehow look upon that as the modern day expression, at least in steel, of the problems relating to subsidy and dumping.

Chairman GIBBONS. Let's call it targeting if we can. I know we associate that with Japan, but there are others targeting, too.

Mr. SHEEHAN. I recognize the use of that term. If the terminology means something more, if it includes what I am talking about, I for one—I almost wrote down in my statement that there is targeting, that Government involvement in restructuring an overseas steel industry may be targeting—would agree that it be made amenable to our trade laws; that is, that it be considered an unfair trade practice.

One final thought. Under unfair trade practices it is really incumbent on the injured party to put in the grievance, yet on a couple occasions we have witnessed that the Government has self-initiated cases. In specialty steel we got an interesting petition where the Government self-initiated the section 201. In the Carter administration we had the Government self-initiate the TPM. I wonder whether you might take a look at whatever section of the law we have and put a positive obligation upon the Government to self-motivate actions certainly in some of the more visible areas of unfair trade competition.

Chairman GIBBONS. Let me say I have moved on self-initiation. Perhaps you remember one of my outbreaks last year when I was kind of giving Secretary Baldrige a hard time about self-initiation but I rethought that and I was wrong. That is appropriate in some cases. I do worry about an agency initiating a case then being the prosecutor, the judge and jury and the executioner.

There is something about that that worries me, the fairness of it.

But I recognize that if the cost of bringing these actions is so high we cannot expect most people to be able to—particularly distressed industry under pressure—to pay the cost. Just accumulating the evidence as Mr. Peabody pointed out, is a very difficult process that may require some diplomatic types of approaches to other governments in order to penetrate the veil that covers them in the foreign country, not just the language and the computers and all but just the whole process of going into a sovereign country and getting data.

Mr. SHEEHAN. Earlier there were comments about the perception of our laws and everybody is concerned about the perception that they are not being implemented. To use the analogy that might limp, obviously the policeman does not just respond to a complaint where there has been harrassment, he also patrols the street and that probably is the indication as to whether your police force is an adequate one or not.

If your Government responds only where there has been the elaborate form of challenge by the injured party then maybe that perception we were all concerned about will prevail that the government is not protecting our interests. I understand the problem that you brought up but maybe there ought to be a way that you might look at it.

Chairman GIBBONS. I think government has a greater role and responsibility in an unfair practice.

Mr. SHEEHAN. That is what I am talking about.

Chairman GIBBONS. One that smacks of collusion and deliberateness more than it perhaps does with the so-called competitive problem that we have.

I realize that targeting covers a broad range but to me targeting seems to be nothing more than a rather sophisticated backroom type way of subsidizing. It is very sophisticated. It may not be cash but it is a bounty of some sort that has to be granted in order to have it take place.

I think that comes within the spirit of our old 1800 law on bounty and grant. I would be glad to try to see if we cannot modernize that concept to take advantage of it right now.

I would like to get working quickly if we could on the unfair practices and see if we cannot come up with something. I apologize for taking so much time——

Mr. LENA. Can I make a comment, Mr. Chairman, because I don't want to be misunderstood with respect to specialty steel. Mr. Sheehan mentioned restructuring and so on. Restructuring has not been the specialty steel industry's problem. The industry is modern. It has been established by government studies to be so. Our problems are rooted in unfair trade practices. I completely support what you are saying. If we could get a handle on the foreign dumping and subsidies, the specialty steel industry would not have a problem today. I won't worry about the financing, I agree with what you are saying.

If there was a way to get a handle on the unfair trade practices of dumping and subsidies, this industry would not be having a problem today. All the facts support that if that were done, namely if fair trade was in effect, there would be very little specialty steel coming into this country instead of the problem we have where in some product lines over 50 percent of our market is now imported.

To me one of the major problems aside from attitude—and I would like to see that change, too, so that these laws will be enforced and enforced vigorously—is that the laws are deficient because they don't in any way provide timely relief. There is no way if the law is followed that you get timely relief.

The reason for that is the injury part. You have to be very, very badly injured in order to prove injury. As a result, the industry is hurt, jobs are lost, plants are shut down before you win a case—even if the administration's attitude is correct.

The foreign people know that there are no penalties. One thing to consider, which we have suggested in our recommendations to you, Mr. Chairman, addresses the problem that if you cannot change the attitudes, what can you do? You know, one thing you can do—if you cannot get rid of injury because of GATT commitments—you can make the penalties more severe than they are now. You can provide that any penalty is retroactive to the time the injury occurred, which can be very, very substantial. It would not be just a slap on the hand such as we have had in the countervailing duty case we won against Brazil. The solution to that case has been a suspension agreement with Brazil. They will put an export tax on. It was in the paper yesterday.

Now what the heck kind of relief is that? Who will police the Brazilians?

Chairman GIBBONS. I don't know who dreamed that up.

Mr. LENA. The Brazilians dreamed it up but the Commerce Department accepted it.

Chairman GIBBONS. I shook my head on that one.

Mr. LENA. We take them to the Court of International Trade if they don't comply.

The point on the cost of these laws is this: if you have one producer in one country injuring you the cost is not so great in terms of dollars—although there still is a problem of getting information—but when you are in a situation like specialty steel or many of our industries where we have 16 nations competing with us in this market.

We have an average of maybe four producers in each of those nations shipping products into this country. We have five or six or seven product lines depending on how the ITC wants to define it. You have to file individual cases. If you want to then calculate how many dumping and countervailing duty cases you would have to file to really address the total problem by this industry you would have to have 100 or so.

Then when the lawyers tell you it will cost $100,000 minimum for each case, and you multiply it, you have $10 million looking at you. This industry doesn't have the kind of resources to develop the information to attack the problem based on individual cases.

Those are the kinds of problems we face. I think there are things that can be done about it. As I said, one thing is a much more severe penalty so that the foreign nations and the foreign dumpers will have to do, consider, hey, if I am caught and they find me guilty it will cost me something very, very substantial rather than what right now is simply a slap on the wrist. It is nothing more than that.

Even if they are found guilty, and our experience with the French wire rod case is an example, not much happens. The dumping finding was made in 1973. There has been absolutely no verification since 1974.

What happens is the French say we will raise our price to the acceptable level so that we are no longer dumping and that is the extent of the penalty. Is that a penalty? After our industry, after it is severely injured, it does us no good to get that decision.

I support you on what you are saying. I am not highly optimistic that you will change the attitudes of the administration, this or later ones, until there is a full recognition of what is going on, targeting and so on, and that it is not just the smokestack industries, that it is a broad attack. Until that is recognized I don't see people changing.

I am a free trader that believes in quotas for specialty steel. That may sound crazy. I believe in free trade based on what free trade was intended to be, based on comparative advantage. Make goods anywhere in the world where it is the cheapest to do so and that will benefit the consumer.

I buy that. It will help the country with the comparative advantage to raise its standard of living. All of that without Government intervention, no barriers, no subsidies, nothing. If that should ever occur, fine. But it won't occur. In fact it is going the other way in the world in terms of protectionism. We can stay on the pure ideological path expecting other countires to change, while our industries go down the tube. They won't change. The other nations are hurting us. The EEC, Japan—they have to manufacture and export because they don't have other kinds of raw materials or energy and so on.

They have to export. There is no question about that. So they are doing what is in their best interests. They are not trying to be nasty with us and destroy us or anything. They are doing what they have to do. We are sitting here taking it.

What is happening is we are all going down the tubes. Semiconductors, whatever, they have all import problems. It is not just us. I say I am in favor of quotas. It is because I believe in free trade, but at the same time I don't see a solution to the problem in terms of administration. So I say to solve the problem so everybody is happy—not right or wrong but so everybody is happy—put in quotas. What that means to me since I know we can compete, is that it is unfair to me. Not to them, but to me. I shouldn't have to have quotas to give up any share of my market if I am able to compete. But I have to accept it because I don't know of any other solution right now. Hopefully, down the road there will be a solution but I don't see it now.

Chairman GIBBONS. I think the challenge to us is to provide solutions.

Mr. LENA. Yes, sir.

Mr. PENDLETON. Let me emphasize, we mentioned the 201 case in stainless steel wire and the specialty steel group has filed 201 cases, that is not because of fair trade even though it is that section of the statute, it is because there are so many countries, and so many different product lines, that that is the only practical mechanism available.

We would prefer to stop the unfair trade practices but we have been forced to resort, as an industry, to the fair trade section to achieve the remedies that Dr. Lena talks about.

Mr. **PEABODY**. You remember, Mr. Chairman, last year, and the year before when the representatives of Commerce came up here and said they were overwhelmed by the number of dumping and countervailing duty cases that had been brought.

It is because of this approach in the law written in by Congress, construed by the Trade Commission, that each particular product line has to be looked upon as a vertical slice, a vertical industry itself.

It is a metaphysical concept but that is what happened. Cold rolled sheets, hot bands, cold finished bars, each is looked on as a separate industry.

Chairman **GIBBONS**. That is an interesting comment. I had not been aware——

Mr. **PEABODY**. You turn over the evidence you developed. You have your facts, you have the P&L and the balance sheet. Injury is on a product line basis.

Mr. **LENA**. The whole system is distorted in favor of foreign producers. It makes it much more difficult for the American producer to prove injury. For example, there is the aspect of splitting it into product lines so that you run then into the situation where the agency breaks up the industry into hot rolled bars, rod, et cetera. So the agency looks individually at the imports in each category—you have 16 nations—and the importers say boy, you cannot convince the Commission, you cannot really accept the allegation that our 100 tons per month of hot rolled bars when the whole market is very small in hot rolled bars, is hurting you.

The whole system is distorted in my opinion to really make it difficult for a domestic industry to prove it is being hurt.

Mr. **PEABODY**. This is a legal theory and an approach that ultimately, I think, goes back to the concept of individual parties privately suing another individual party. The world out there at least in steel "ain't" like that any more.

Chairman **GIBBONS**. Mr. Vander Jagt.

Mr. **VANDER JAGT**. Thank you, Mr. Chairman.

It has been a fascinating dialog. It is a tremendous expense of bringing the suit, or getting data when it is a government corporation. You would sure overcome the problems if you shifted the burden of proof to the foreign producer.

Mr. **PEABODY**. You sure would.

Mr. **PENDLETON**. Yes, sir.

Mr. **LENA**. That is right.

Mr. **PEABODY**. When you do that you have to put discipline into that system, Mr. Vander Jagt, and the penalties and sanctions with respect to the production of it.

Mr. **VANDER JAGT**. But you would sure get at those two problems in a hurry. I would like to compliment each member of the panel, not just for your statements but for all the statements here in the dialog. You gave very thoughtful testimony and practical testimony and it comes from the real world and we are greatful to you for it.

Chairman **Gibbons**. I am optimistic. I think we are moving toward solutions.

I will ask the staff to see what we can do to adjust today's agenda with your consent. We are running out of time. That is exactly what I don't want to do in trying to solve the problems with unfair trade practices this year. We can keep the agenda manageable, if we do, we will get things done.

The other trains will start from the station as rapidly as we can get them out. I mean to work on all these things we have in these large hearings but we cannot manage that much. I appreciate what you have done to help us understand the problem better today.

We will take lunch now to 1:30 or shortly thereafter.

[Whereupon, at 12:15 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Chairman **Gibbons**. The meeting will reconvene now. Our first witness will be here to be introduced by our colleague Olympia Snowe. Mrs. Snowe, we are so happy to have you with us to talk about a problem that you have talked to me about and we have talked to Congress about. We are glad that you are here to introduce your fellow citizen from Maine.

STATEMENT OF DOROTHY P. KELLEY, EXECUTIVE VICE PRESIDENT, MAINE POTATO COUNCIL, INTRODUCED BY HON. OLYMPIA J. SNOWE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mrs. **Snowe**. I appreciate that, Mr. Chairman.

Mr. Chairman, I want to thank you and the committee for providing this opportunity for Mrs. Dorothy Kelley to testify before your subcommittee. Mrs. Kelley is the executive vice president of the Maine Potato Council, an organization that represents more than 1,100 potato growers in the State of Maine.

Mrs. Kelley has in-depth knowledge of our Nation's existing trade laws particularly with the length and expense and complexity of those laws, and will greatly assist this subcommittee as it seeks to develop a means in assisting smaller industries in this country from unfair trade practices as well as damaging imports.

The Maine Potato Council has spent more than $100,000 in assisting its potato growers because they have been adversely affected by imported subsidized Canadian potatoes. In fact, the association is involved in an antidumping investigation now.

There are other industries that have had a history of frustration in seeking relief because of the documentation requirements, the lengthy review proceedings, the complex data as well as insufficient resources, and for that reason I have introduced legislation that would strengthen the administration of the present trade laws so they would be more responsive to the needs of the industries which they are designed to protect.

I am pleased the subcommittee is able to hear Mrs. Kelley because of the breadth of her experience in the trade area, and I know her testimony will be very valuable to the committee. Thank you, Mr. Chairman.

Chairman **Gibbons**. Thank you. I want to apologize to you personally for keeping you waiting for so long today. I know how busy you are and I apologize.

Mrs. **Snowe**. No, no, I appreciate the opportunity and also for revising your afternoon schedule so that we could testify first.

Chairman **Gibbons**. Mrs. Kelley.

Mrs. **Kelley**. Mr. Chairman, in the year 1975 Canadian officials were developing a plan to increase potato production for possible export by 40 percent, not only offshore but also to the United States.

Mr. Chairman, I might add that my testimony is very lengthy, and I am going to try to summarize that.

Chairman **Gibbons**. You go right ahead. We will put the statement in the record and you may proceed as you wish.

Mrs. **Kelley**. In the past years, the United States has exported more potatoes into Canada than they exported to us. However, in 1979 the Canadians turned this around and exported more product to Eastern United States than we sent to them.

Since 1976, up to the year 1981, the imports into the United States from Canada had increased 700 percent. In 1978 the directors of the Maine Potato Council asked me to file a petition regarding Canadian imports. The Maine Potato Council retains a local attorney in regard to agriculture problems, and I asked him to help me file a petition. He apologized and said that it was absolutely impossible for him to do.

I then turned to seek help from legislative aides, of our attorney general in the State of Maine, and I received the same reply.

Since I had been directed by my organization to file a petition, I worked up a draft on a countervailing duty petition and made the trip to Washington to meet with officials of the International Trade Commission and the Department of Commerce. They studied my draft proposal and they advised me to file an antidumping petition.

I then returned to Maine and spent 4 months gathering statistics and documentation. The document of injury is nearly impossible for someone in my position to prove, as the buyers who purchase Canadian potatoes instead of Maine's are very reluctant to provide you with the information needed for the petition.

Since prices available to me are wholesale prices and also the USDA, the Statistical Reporting Service has found it difficult to determine a method of reporting farm gate price.

After the 4 months of constant working on an antidumping petition, the 30 copies were mailed to the International Trade Commission and the Department of Commerce. At this time some 100 Maine potato producers blockaded the border between Maine and Canada.

The administration immediately sent a task force to northern Maine for a private meeting with a select group of growers. At this meeting, which I was not privileged to attend, the task force decided that I should file a countervailing duty petition. A telephone call was received from the administration upon return of the task force. I was informed of the decision for Maine to file a countervailing duty petition.

The calling party suggested that the antidumping petition which I had filed would be denied before it was published in the Federal Register, and they requested that I start the countervailing duty petition immediately. It seemed the petition and I became a political football.

I tried the countervailing duty petition, which was actually much easier to write and to document because of the various known subsidies in Canada. However, I still could not document the injury.

I turned my second countervailing duty attempt over to professors at the University of Maine, and they too found the documentation of injury impossible.

The process for filing a petition with the International Trade Commission and the Department of Commerce is cumbersome, statutory, and perplexing, for an individual who has no legal background and represents a small agricultural industry.

In November 1981, Senator William Cohen held an oversight hearing on the economic impact of border state industries from the U.S. and Canadian trade policies, and I was privileged to testify at that meeting. At the close of the oversight hearing, Senator Cohen made the comment, and I quote:

> It appears to me at least that the cost and the complexities that are imposed on small firms and small industries are enormous.

Donald deKieffer, the then general counsel to Special Trade Representative Bill Brock, made the following recommendations, and I quote:

> I think it might be worthwhile if either this committee or the Senate Finance Committee, or other appropriate agencies on the Hill, looked at the costs that have been imposed upon [illegible] businesses and small industries by the Act itself.
>
> I think you [illegible] out the problem that small firms and small industries have in deciding [illegible] go to file a petition.
>
> Congress [illegible] stop and go lights. I believe that it would be at least appropriate for [illegible] here to investigate whether or not these added costs have precluded [illegible] from pursuing their rights under the law.

He continued:

> Perhaps the Equal [illegible] to Justice Act would be a good starting point. It certainly would be [illegible] fruitful endeavor because it is clear that the Finance Commmittee and the Senate itself believes that the 1979 Trade Agreement Act amendments were designed to protect American business and not to harass them. No provision has been made in the Trade Act Agreement enabling small businesses and small enterprises to be able to afford these kinds of things.
>
> The law is in certain respects very explicit and I think it would be fruitful if this committee examines the law to see if there are ways to reduce the financial burden on small industries in bringing these types of proceedings.

Congresswoman Snowe has mentioned her legislation, H.R. 1269. This would help reduce the financial burden.

I feel that the quote from Mr. DeKieffer is very pertinent information that you are seeking here today.

In July 1981 the Maine Potato Council did retain a legal firm here in Washington, and they began investigating the injury. This action is very, very costly to a small agricultural industry. In March 1982, through the efforts of Donald deKieffer, Maine was granted a 332 investigation of Canadian potatoes coming into the United States. The investigation continued until mid-August, and the document through that 332 investigation gave us some very valuable information for filing a petition.

On February 9, 1983, after 5 years of frustration, the Maine Potato Council has filed an antidumping petition against the importation of Canadian potatoes. The filing of the petition is very costly and should the International Trade Commission and the Department of Commerce decide in our favor the increase in tariff will only be allowed to a percentage of the documented injury, and this may not reduce the importation of Canadian potatoes.

Last winter Canada closed the border to several Western States, Idaho, Oregon, and Washington, in regard to western seed potatoes going into Canada, and this last summer, Canada closed the border to bulk potato shipments coming out of Virginia, Delaware, and North Carolina.

Normally these potatoes out of the Eastern Shore do go into Canada. However, Canada found themselves with abundant supply of potatoes and therefore they would not allow the U.S. potatoes to enter at that time. It is most difficult to explain to U.S. potato producers how Canada can close her border to imports when her producers have available supplies while U.S. producers must hire a tariff attorney, prove all their facts through lengthy hearings of at least 10 months' duration, and many times have their petition denied.

The Foreign Agricultural Service of the USDA is directed to seek exports of American products, and rightfully so. We feel that the International Trade Commission and the Department of Commerce and the Special Trade Representatives have cooperated to the best of their ability. However, they can only go so far according to the U.S. understanding of the GATT agreement.

To date, the Maine Potato Council has expended $52,525 on mailings, air fare for me to Washington and attorneys fees. We presently owe $42,041, plus we have to be told that the further costs will likely be over $100,000. This is a large debt for a small producers association with an annual budget of approximately $80,000. Our grower membership has decreased from 1,362 in 1980 to 1,131 at the present time. It is difficult for the Maine producer to understand why our Government does not take some action on behalf of agriculture.

I would like to add, it seems all of agriculure is in a problem at this time from imports from border countries. I thank you for allowing me to address this problem of seeking relief from foreign imports.

[The prepared statement follows:]

STATEMENT OF DOROTHY P. KELLEY, EXECUTIVE VICE PRESIDENT, MAINE POTATO COUNCIL

Mr. Chairman and Honorable Members of the Committee: My name is Dorothy Kelley. I am the Executive Vice President of the Maine Potato Council, which is an organization that represents all commercial potato producers within the State of Maine.

In 1975, the Maine Potato Council was concerned about the Geneva Agreement on Tariff and trade. At that time, we wrote several letters to trade negotiator, Robert Strauss, regarding the subsidies that the Canadian producers enjoyed at that time. In the year of 1975, Canadian officials were developing a plan to increase potato production for possible export. The plan included a proposal for the Province of New Brunswick to develop an increased potato production from 10.8 million hundredweight to 14 million hundredweight in 1983. The purpose of this strategy, so stated in the plan, was to increase the export of potatoes by 40 percent, not only offshore, but also the United States.

In past years, the United States has exported more potatoes into Canada than they exported to us; however, since 1979, the Candadians have imported more product to the Eastern United States than U.S. producers exported to them through the west. The chart hereto attached, as Exhibit No. 1, details the import of Canadian potatoes through the past few years: it is interesting and worthy of investigation, since the import and export statistics of the United States and Canada do not coincide. Since the 1976 year to 1981, imports to the United States have increased 700 percent.

Maine has a close proximity to Canada and is completely surrounded by eight border crossings. Therefore, the Maine potato industry was the first area to feel the effects of increased potato imports. Seventy percent of the Canadian imports enter the United States through Maine ports of entry and in 1980 that volume had increased to more than 6,000 loads, which was 25 percent of the total volume of Maine potatoes that went to the fresh tablestock market. There are three types of Irish potatoes, one, tablestock are the potatoes that end up on the supermarket shelf bagged for the consumer; two, seed is self-explanatory, it is potatoes which will be planted; and three, we have processing potatoes, which will be made into potato chips, french fries, and other products such as hash browns, flakes, and so forth.

In 1978, the directors of the Maine Potato Council asked me to file a petition regarding Canadian imports. The Maine Potato Council retains a local attorney in regard to agricultural problems within the area, and when I asked him to help file a petition with the International Trade Commission, he apologized and said it was impossible for him to do. I then tried to seek the help of the legislative aid of the Attorney General in the State of Maine and received the same reply that they had no idea how to go about filing a petition with the International Trade Commission and the Department of Commerce.

Since I had been directed by my organization to file a petition, I worked up a draft of a counter-vailing duty petition. I personally made a trip to Washington for the officials of the International Trade Commission and the Department of Commerce to study my draft proposal and to give assistance and advice. After studying the statistics and documentation that I had, the officials of the International Trade Commission and the Department of Commerce urged me to file an anti-dumping petition. I returned to Maine and spent four months gathering more statistics and documentation. The documentation of injury is nearly impossible for someone in my position to prove, as buyers who purchase Canadian potatoes, instead of Maine's, are very reluctant to provide you with the information needed for the petition. Since prices available to me are wholesale prices. The U.S.D.A. Statistical Reporting Service has found it difficult to determine a method of reporting farm gate price, it was absolutely impossible for me to do. The U.S.D.A. informed me that buyers import Canadian potatoes since they are premium potatoes and I maintained that the premium is in the price due to the difference in the exchange. Canada now packs a 2¼ inch minimum potato. Maine also packs a 2¼ inch potato if the buyer requests this size. However, Maine's 2¼ inch potato sells for a higher price than the U.S. #1, which is 1⅞ inch minimum. Therefore, the buyer imports the Canadian 2¼ inch potato since the difference in the exchange gives a price advantage.

After four months of constant working on an anti-dumping petition, the thirty copies were mailed to the International Trade Commission and the Department of Commerce. At this time, some hundred Maine potato producers blocked the border between Maine and Canada. The administration immediately sent a "task force" to Northern Maine for a private meeting with a select group of growers. At this meeting, which I was not privileged to attend, it was decided that I should file a counter-vailing duty petition.

A telephone call was received from the administration upon the return of the "task force" and I was informed of the decision for Maine to file a counter-vailing duty petition. The calling party suggested that the anti-dumping petition, which I had filed, would be denied before it was published in the Federal Register, and they requested that I start again with a counter-vailing duty petition. It seems the petition and I became a political football. I tried the counter-vailing duty petition, which was actually much easier to write and to document because of the various known subsidies; however, I still could not document the injury. I turned the second counter-vailing duty petition over to some economic professors at the University of Maine, and they too, found documentation of injury impossible. Counter-vailing duties are designed to eliminate the advantages that exporters to this country may have when they ship goods that benefit from government subsidies. Although I could document grants, industry loans, freight subsidies, to a total of 30 assistance programs, which is what the Canadians like to call them, it seems that some of these are not considered subsidies. It is difficult for me to understand what is considered a subsidy.

The process for filing a petition with the International Trade Commission and the Department of Commerce is cumbersome, statutory, and perplexing for an individual who has no legal background and represents a small agricultural industry.

According to our governmental policy, a subsidy in regard to the GATT is when the government willingly subsidies an industry for export only. When a government back in 1975 decided it will do everything possible to increase potato production from 10.8 million hundredweight to 14 million hundredweight in 1983 for the purpose of increasing exports by 40 percent, then it seems logical that any proposal to subsidize that product is done in an effort to increase exports.

In November of 1981, Senator William Cohen held an oversight hearing on the economic impact of border state industries from the United States and Canada trade policies and I was privileged to testify at that hearing. At the close of this oversight hearing, Senator Cohen made a statement, "It appears to me, at least, that the cost and the complexities that are imposed on small firms and small industries are enormous." The Senator asked agency administrators testifying, "What kind of recommendations would you make to alleviate that burden for a small firm?"

Donald DeKieffer, then the General Counsel to special Trade Representative Bill Brock, made the following recommendation, and I quote: "Senator, as I mentioned a moment ago, there are two or three things that can be done."

"One is that small firms and small industries, either through their associations or directly, can approach the various Government agencies—and I think you've seen today a great deal of willingness of the agencies to try to provide the kind of advice that's necessary to receive along these lines."

"Second, our agency in particular is more than willing—and certainly in the past, since March, has provided advice to over 37 different industry groups—as to how they might proceed, whether or not our own agency was in charge of administering them."

"Finally, I think that it might be worth your while if either this committee or the Senate Finance Committee, or other appropriate agencies on the Hill, look at the costs that have been imposed upon small business and small industries by the acts themselves."

"I think you correctly pointed out the problem that small firms and small industries have in deciding which way to go. Congress, not the administration, not USTR—or any of the people at this table—have devised these various stop and go lights. Certainly, making them more legalistic and more complex has added legal costs, and I believe that it would be at least appropriate for someone here to investigate whether or not those added costs have precluded small businesses from pursuing their rights under the law."

"Perhaps the Equal Access to Justice Act would be a good starting point. It certainly would be a fruitful endeavor, because it's very clear that the Finance Committee and the Senate itself believe that the 1979 Trade Agreements Act amendments were designed to protect American business, not to harass them. They were designed to protect American small businesses and small industries from the arbitrary and capricious sorts of decisions that were allegedly being made by the administering agencies in the past, and to give them the kind of legal protection that the Senate felt was necessary."

"Those kinds of protection, though, are expensive, and no provision was made in the Trade Agreements Act for enabling smaller businesses and smaller enterprises to be able to afford these kinds of things."

"In sum, Senator, I believe that this administration wants to get away from the idea that small business and the Government have an adversary relationship. We don't."

"I want to stress that this administration, in particular the U.S. Trade Representative, does not want to force small businesses to jump through a series of flaming hoops before they can get the kind of import relief that they're entitled to under the law. The law is, however, in certain respects very explicit, and I think that it would be a fruitful area for this committee to examine the law to see if there are ways to at least reducing the financial burden on smaller industries in bringing these types of proceedings."

I feel the above quote is very pertinent to the information you are seeking in this hearing.

In July 1981, the Maine Potato Council did retain a Washington legal firm who began investigating the amount of injury. This action is very costly for a small agricultural industry.

Back in 1980, I convinced the Maine Governor Brennan to inspect a few of the Canadian trucks coming across. At that time, he put federal/state inspectors on the border and they checked fifteen loads of tablestock of potatoes. They were inspected as Canadian #1 grade and five of those fifteen loads failed to make the inspection grade of Canadian #1. Had the fifteen loads been graded as U.S. #1's, there would have been ten loads out of the fifteen that failed to meet the U.S. #1. Therefore, December of 1982, the Commissioner of Agriculture decided that he would stop the trucks and inspect them as they came across the border. The Commissioner proposed to charge a substantial fee for this inspection service. This brought about court action by the U.S. government against the State of Maine and resulted in an injunction against the State of Maine for stopping any trucks coming into the United States.

In March of 1982, through the efforts of Donald DeKeiffer, General Counsel to the Special Trade Representative Bill Brock, Maine was granted a 332 investigation of Canadian potatoes coming into the United States. The investigation continued until mid-August and the documentation gave us some information very valuable for filing a petition.

On February 9, 1983, after five years of frustration, the Maine Potato Council has filed an anti-dumping petition against the importation of Canadian potatoes. The filing of a petition is very costly and should the International Trade Commission and the Department of Commerce decide in our favor, the increase tariff will only be allowed to a percentage of the documented injury, and this may not reduce the imports of Canadian potatoes. While attempting to file an anti-dumping petition in 1978, I discovered many shipments of seed were destined for repackers in Massachusetts and Hunts point terminal markets in the Bronx, New York area, where they plant no potatoes anytime of year. Customs have determined that the United States government has no control over potatoes once they cross the border and since seed potatoes came in at a reduced tariff after the tablestock quota was filled, the U.S. government was losing duty on many Canadian shipments.

For this reason, Maine Senators Cohen and Mitchell introduced legislation calling for Treasury to provide a method to determine the end use of imported seed potatoes. This legislation finally went into effect as of January 27, 1983, and will help to reduce the amount of Canadian potatoes coming in to some degree.

At the present time, Maine has the support of the American Farm Bureau, as well as 20 of the fall producing states in the United States. Canada closed the border to several western states: Idaho, Washington, and Oregon, in regard to their seed potatoes going into Canada. This past summer, Canada closed the border to bulk shipments of potatoes coming out of the Virginia, Delaware, and North Carolina area. Normally, in past years, these potatoes out of the eastern shore states have gone into Canada. However, Canada found themselves with the abundant supply of potatoes and therefore they would not allow U.S. potatoes to enter at that time. It is most difficult to explain to U.S. potato producers how Canada can close her border to imports when her producers have available supplies while U.S. producers must hire a tariff attorney—prove all your facts through a lengthy hearing process of ten months duration and many times have your petition denied.

The U.S.D.A. Foreign Agricultural Service is directed to seek exports of American products and rightfully show. We feel the International Trade Commission and the Department of Commerce and the Special Trade Representatives have cooperated to the best of their ability. However, they can only go so far according to the U.S. understanding of the GATT agreement.

Senator George Mitchell questioned the legality of the embargo of Eastern shore potatoes in letters to Agricultural Secretary Block and to U.S. Trade Representative William Brock. Senator Mitchell noted that, "Maine potato growers are frequently disheartened by the time required for our government to respond to trade problems, especially when they see first hand the speed with which the Canadian government acts to protect its domestic industry." Mitchell suggested that this might offer an opportunity to either open up the Canadian market to U.S. exports or to deal with higher levels of Canadian imports.

Representative Olympia Snowe in a letter to Alfred Eckes, Chairman of the International Trade Commission, suggested the embargo was a classic example of a nontariff barrier and she urged the International Trade Commission to expand the scope of the section 332 potato investigation to include this latest action taken by the Canadian government.

Senator Cohen remarked that the Canadian provinces have more regulatory power than do the states in the U.S. and he concluded that the United States is limited in its ability to control foreign imports. Cohen said, "it is important to establish the lines of legality to determine when a country has gone beyond the boundary of what was agreed under GATT."

To date, the Maine Potato Council has expended $52,525 on mailings, air fare to Washington, and attorney fees. We presently owe $42,041 plus we have been told the cost will likely be $100,000 more. This is a large debt for a small producer's association with an annual budget of approximately $80,000.

The grower membership has decreased from 1362 in 1980 to 1131 at present. It is difficult for the Maine producer to understand why our government does not take some action on behalf of agriculture. I urge this committee to make recommendations to restrict imports which are damaging small agricultural producers, as well as small domestic businesses.

Thank you for allowing me to address the problem of seeking relief from foreign imports.

EXHIBIT NO. 1

POTATOES, FRESH: U.S. EXPORTS TO CANADA—MONTHLY DISTRIBUTION

[Metric tons]

Month	Marketing year				
	1975–76	1976–77	1977–78	1978–79	1979–80
October	7,171	3,351	1,762	1,523	2,133
November	9,773	2,345	2,079	1,856	1,487
December	9,762	3,959	1,690	2,580	1,254
January	7,582	3,308	2,500	2,489	1,124
February	13,473	3,493	2,384	2,568	3,198
March	15,910	10,979	4,324	4,913	4,968
April	13,176	14,452	8,365	6,659	6,719
May	29,531	29,710	18,601	17,725	13,989
June	63,140	69,239	32,110	32,418	16,720
July	61,194	42,842	39,041	27,426	19,688
August	8,102	7,553	7,076	3,903	4,452
September	3,649	2,103	2,816	4,887	2,081
Total	242,463	193,334	122,748	108,947	77,823

Source: U.S. Department of Commerce, Bureau of Census.

POTATOES, FRESH: U.S. IMPORTS FROM CANADA—MONTHLY DISTRIBUTION

[Metric tons]

Month	Marketing year				
	1975–76	1976–77	1977–78	1978–79	1979–80
October	1,675	252	2,541	1,701	3,088
November	2,157	1,522	4,076	4,412	9,700
December	5,528	3,176	9,987	7,245	10,905
January	4,836	4,640	9,669	10,417	7,867
February	2,741	3,583	6,015	3,997	5,262
March	3,877	6,955	7,806	4,855	7,242
April	4,101	12,309	14,314	9,507	11,772
May	2,999	3,645	10,748	9,281	16,879
June	451	257	4,944	7,275	3,058
July	(2)	28	854	1,849	717
August	91	3	124	363	517
September	86	253	198	1,084	8,024
Total	28,542	36,623	71,276	61,986	85,031

[1] Seed and table potatoes combined.

[2] Denotes not available, unknown, or not applicable.

Source: U.S. Department of Commerce. January 1981.

Chairman **Gibbons**. You make an excellent statement, a very vivid statement. Let me ask, what form of subsidies do Canadians use for their potato industry?

Mrs. **Kelley**. I have 30 known subsidies and I will not name them all. Actually, they have a subsidy that allows $150,000 for them to build new storages. They have a subsidy——

Chairman **Gibbons**. Each farmer?

Mrs. **Kelley**. It is a group of three farmers that have to go together and then get $150,000 to build the storage. In transportation from east to west to near Montreal, the transportation is subsidized because 75 percent of the potatoes are produced in the Maritimes and therefore they allow them a subsidy for that. Growers are allowed interest-free loans at harvest time to get their potatoes into storage. These are some of the ideas of the subsidies that they have.

Chairman **Gibbons**. Do you know from your own experience, do they extend these subsidies to anything other than potatoes or have they singled out potatoes?

Mrs. **Kelley**. In the 1975 marketing agreement that they came to, Mr. Chairman, they singled out potatoes and rutabagas to increase the exports of those to the United States from the beginning. Since that time they have increased their exports of blueberries and cabbage and carrots and onions, and the list is very, very lengthy.

As a shining example, last year our Secretary of Agriculture requested for the wheat growers to reduce their production 20 percent, and, of course, that was in the media, and Canada immediately increased their production of wheat exactly 20 percent. That wheat is coming into the United States.

Chairman **Gibbons**. Mrs. Snowe, your bill certainly has very worthwhile provisions in it. The staff has been briefing me on it. We will take a very serious look at it and see if we can't incorporate it in some of the legislation we intend to come out of here early this year.

As I say, I want to put particular emphasis on the so-called unfair practices because I think they are the most easily identified and the area that screams the loudest for immediate attention. There are other things in the trade laws that perhaps need attention, but I would like to get this one area done first, if I can.

We will work on it and see what we can do. Your testimony is very graphic, very understandable, and very well presented. I commend you for your tenacity and your skill.

Mrs. **Kelley**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Mr. Vander Jagt.

Mr. **Vander Jagt**. Thank you, Mr. Chairman. I am delighted to welcome our colleague from Maine to thank her for the work and thought that went into her bill.

Mrs. **Snowe**. Thank you.

Mr. **Vander Jagt**. And also for bringing us a very outstanding witness. I agree with the chairman, it is graphic, vivid, and it is well presented. I have one question that you shouldn't be expected to know the answer, but maybe you do.

The case of the Canadians preventing our shipping potatoes into Canada in the western part of the country at the same time the potatoes were coming into Maine, do you know any of the details of that case? Was it a roughly comparable situation, or how was it, what device do they use to protect their potatoes in the western part of the country?

Mrs. KELLEY. I do not know exactly the details of that.

Mr. VANDER JAGT. And you shouldn't be expected to.

Mrs. KELLEY. I am very familiar with the situation where they did close their border to the western seed, which of course reduced the importation of potatoes. The western area has a nematode that the Canadians maintain they do not have. They do have it, but in order to keep those potatoes out, because they had enough seed supply.

This fall the Canadians were maintaining that the U.S. product was coming into western Canada at a lower price than their few producers out West were receiving. Now, I am not sure that that is an actual fact, but that was what they said.

I have been meeting with the Canadian Horticultural Society for 4 years just working out the different problems that we have. This is what I was told at that time.

Mr. VANDER JAGT. Thank you, and thank you again for your excellent testimony.

Mrs. SNOWE. I thank the chairman and the committee and appreciate the consideration that you will give to the legislation. I think it is important that my experience in the Maine potato industry has enlightened me on the problems of small industry in dealing with the unfair trade practices and just providing comparable leverage and assisting small industries to the extent other nations have in assisting their industries. Again, thank you very much.

Chairman GIBBONS. Our next group of witnesses is from the Ad Hoc Labor Industry Trade Coalition, Mr. Conner, Lauren Howard, and Mr. Nehmer. You may proceed as you wish, sir.

STATEMENT OF JIM H. CONNER, EXECUTIVE VICE PRESIDENT, AMERICAN YARN SPINNERS ASSOCIATION, INC., CHAIRMAN OF THE AD HOC LABOR-INDUSTRY TRADE COALITION (GROUP OF 33), ACCOMPANIED BY LAUREN R. HOWARD, COUNSEL, AND STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES, INC.

Mr. CONNER. I am Jim Conner and I am the executive vice president of the American Yarn Spinners Association of Gastonia, N.C. I am also chairman of the Group of 33. I am accompanied by Ms. Lauren Howard, partner in the law firm of Collier, Shannon, Rill & Scott, and by Stanley Nehmer, president of Economic Consulting Services Inc., both of Washington, D.C. We have submitted a longer statement with a considerable amount of detail, and we will keep our remarks as brief as possible.

Chairman GIBBONS. You just proceed any way you want to, but we will put your statement in the record.

[The prepared statement follows:]

STATEMENT OF JIM H. CONNER, EXECUTIVE VICE PRESIDENT, AMERICAN YARN SPINNERS ASSOCIATION, ON BEHALF OF THE AD HOC LABOR-INDUSTRY TRADE COALITION (GROUP OF 33)

OUTLINE

I. Three major areas to be discussed

1. Seriously worsening international trade problems confronting the United States.
2. Need for fundamental changes in U.S. trade laws.
3. Numerous deficiencies in the administration of the countervailing and antidumping statutes and Section 301 of the Trade Act of 1974, as amended in 1979.

II. Worsening problems

1. Staggering balance-of-trade deficit.
2. Decimation of basic industries.
3. Developing problems for high technology industries.
4. Growing distortion of trade and investment flows.
5. Rules of the game are not equal.

III. Need for reform of Trade Laws: four key concepts

1. Foreign practices, whether by governments or firms, which give foreign producers an arbitrary advantage distorting international competition, should be considered as directly actionable under our trade laws.
2. The Executive Branch should have as a mandate the active monitoring of international practices and the self-initiation of action when evidence of trade distorting practices is found.
3. The burden of proof should be shifted from domestic to foreign interests, whether it be a government, an industry or an individual firm, at least to the point where there results a more equitable sharing of the burden of proof.
4. The actions taken by the Executive Branch should effectively prevent damage, and the U.S. industry or firm should be fully compensated for the damage done and for its costs in pursuing the action.

IV. Deficiencies in the administration of the unfair trade statutes

1. Acceptance of developing countries under the Subsidies Code.
2. Processing of petitions filed under Section 301.
3. Extensions of preliminary determinations.
4. Suspension agreements.
5. Delays in obtaining approval for receiving information under administrative protective orders.
6. Administrative reviews.
7. Commerce Department regulations.

STATEMENT

My name is Jim H. Conner. I am Executive Vice President of the American yarn Spinners Association of Gastonia, North Carolina. I am also Chairman of the Group of 33. I am accompanied by Lauren Howard, partner in the law firm of Collier, Shannon, Rill & Scott, and by Stanley Nehmer, President of Economic Consulting Services Inc., both of Washington, D.C. All of us have been heavily involved in the international trade area and can speak to you based on our experiences and those of others in our group.

We are here on behalf of the Group of 33, the name which has been applied to an ad hoc coalition of trade associations and labor unions which are deeply concerned about the proper implementation of the countervailing and antidumping duty statutes and other legislation dealing with unfair trade. Although we have a commonality of interest and of purpose, not all of our member groups concur in all of the details of the positions taken by the group. A list of our members is attached.

Our group advised both the Executive Branch and the Congress during the negotiations of the Subsidies and Antidumping Codes in 1978 and 1979, and in the development of implementing legislation in 1979.

We supported the MTN and the Trade Agreements Act of 1979, and we feel that we helped to develop the consensus in this country necessary for their adoption. We did so because we were convinced that the implementation of what was negotiated in Geneva would represent a giant step forward in providing American industry and labor with fair and effective recourse to our trade statutes.

Mr. Chairman, we have asked to testify today for three reasons. First, we believe that the United States is confronted by seriously worsening international trade problems. Second, we beleive that those problems call for some fundamental changes in our trade laws, depite the beneficial changes made in 1979 and despite commitments by the Executive Branch regarding their implementation. Third, there are numerous deficiencies in the way in which the countervailing and antidumping duty statutes and Section 301 of the Trade Act of 1974 are being administered, again despite the improvements enacted in 1979. We believe that your committee might like to hear about some of those deficiences.

We wish to discuss each of these three major areas today.

Worsening problems

In the judgment of the Group of 33, our country is beset by—and must do something about—five major trade problems. Together, these probelms impede economic growth, cost jobs, and are steadily eroding America's techological and industrial base.

The first problem is, in a sense, a summation of the other four. I refer to our staggering balance-of-trade deficit. In 1982 this deficit widened to $43 billion from $40 billion in 1981. This year the Administration believes that the deficit could be as high as $75 billion. C. Fred Bergsten, former Assistant Secretary of the Treasury, estimates that this year's trade deficit will cost 1 to 1.5 percentage points in the GNP. More than half of the decline in the GNP last year can be attributed to the trade deficit.

One manifestation of this trade deficit, and the second problem, is the decline, some would say the decimation, of America's basic industries. Steel, autos, consumer electronics, and textiles and apparel, just to name a few, are in deep trouble. While their situtations may improve as Western econimies recover from the recession, hardly anyone expects these industries to be restored to the production levels at which they operated just a few years ago.

We have all seen countless reports of closed plants and unemployed workers on evening television. How many of those plants will reopen, how many of those workers will find good jobs soon?

The problems would be serious enough if just the so-called "smokestack" or "mature" industries were in trouble, but there is a looming third problem. Advanced technology industries (which applies to some of us in the group) in which the United States has shown the way during the post-war period, also are meeting increasingly stiff competition here and abroad.

As a Cabinet study of U.S. competitiveness in high technology industries pointed out last October: "Market share for the high technology groups—and for nearly all individual industries—has fallen. Foreign competition in high technology has increased dramatically . . ." (Emphasis in original document.) Commercial aircraft, semiconductors and the Japanese push into "super computers" provide several vivid examples.

To some extent this increasing competition in both basic and high technology industries was inevitable, and some would argue, healthy. It is fair to say that American management and labor have not been beyond reproach in conducting their affairs during the past 30 years or so. But all of the difficulties which I have mentioned are not due to a smoothly functioning free market system, not by a long shot.

This takes me to the fourth point. While the United States has, in the main, earnestly worked for a more open world trading system, other nations, with few exceptions, have been maintaining or adding to myriad devices which distort trade and investment flows. I am speaking not only of subsidy practices too numerous to count, but also of "targeting practices," by which I mean a host of governmental devices to promote a national industry at the expense of its foreign competitors. Business Week, in its February 21 issue, for example, notes that the French Government "is injecting a hefty $570 million into the government's ambitious electronics plan."

The article goes on to say "To get the new cash, the heads of the nationalized companies will have to sign "corporate contracts" with Paris in the days ahead, laying out the broad lines of their company strategies and pledging themselves to specific goals for jobs, exports, investments, and research."

I wish to point out, Mr. Chairman, That subsidies and targeting not only increase exports to the U.S. market, but also, together with non-tariff barriers, tend to diminish U.S. exports to countries where these practices exist and to third country markets as well. Thus, American companies and labor are doubly disadvantaged.

One just might argue that all of these problems could be tolerated, if the United States were making satisfactory progress in international negotiations to ameliorate them. Unfortunately, as we all know, it is not.

The fifth trade problem is that in the name of a more open trading system and comparative advantage our citizens have been urged to accept increasing quantities of foreign manufactures in those areas where, for one reason or another, foreign companies enjoy an edge. Yet in those areas in which the United States has a competitive advantage, such as in services and certain high technology goods, we find that, somehow, the situation is different. To insist that the same rules should apply, we are told, reflects a lack of understanding of certain foreign political problems and broader U.S. interests. How much progress, for example, do we really expect to make in the next few years on increasing American exports of services and high technology products?

Need for reform

There is a substantial growing sense of frustration on the part of American industry, labor, and agriculture that they cannot secure effective action to achieve meaningful remedies to international trade practices which confer an unfair competitive advantage. Many who have tested the system have come away shaken by the recognition that such actions are becoming increasingly complex, costly, and uncertain as to the outcome. They find themselves buried under difficult burdens of proof. They find the responsible executive agencies failing to pursue effective verification and investigatory procedures or to self-initiate cases despite a growing body of information on foreign trade practices available to the Executive Branch. Above all, they find the absence of will to enforce the statutes as Congress wrote them.

In these circumstances, it is tempting to turn away from over three decades of bipartisan effort to increase world trade. This is tempting to some but wrong to others. Freer and fair trade confers both economic and political benefits, and the United States should continue to work for this goal.

At the same time, it also would be wrong, and naive, to suppose that we can continue as we have been, counting on international goodwill and a sufficient number of GATT meetings to diminish our trade problems. Essentially, the United States should pursue a two-track strategy of continuing to work for more open trade, while safeguarding basic American economic interest as protracted, exceedingly difficult negotiations proceed. In short, the United States msut act decisively in its national interest. It must arm while it continues to parley.

Our Group, Mr. Chairman, is in the midst of working out some detailed proposals for trade reform. We will be doing so with other groups which are equally concerned about the drift of U.S. trade policy. We hope to present these proposals to the Congress in the coming weeks. Today, however, I can advance a few concepts with respect to the trade practices with which the Group of 33 has always been principally concerned. We have four in mind:

Foreign practices, whether by governments or firms, which give foreign producers an arbitrary advantage distorting international competition, should be considered as directly actionable under our trade laws. This should include action against the practice of "downstream dumping" in which foreign suppliers of materials or components sell at dumping prices to manufacturers in their countries who are then able to export the finished product at a cost advantage due to their lower material costs.[1]

The Executive Branch should have as a mandate the active monitoring of international practices and the self-initiation of action when evidence of trade distorting practices is found.

The burden of proof should be shifted from domestic to foreign interests, whether it be a government, an industry, or an individual firm, at least to the point where there results a more equitable sharing of the burden of proof.

The actions taken by the Exective Branch should effectively prevent damage, and the U.S. industry or firm should be fully compensated for the damage done and for its costs in pursuing the action.

At a later date, Mr. Chairman, we will present detailed proposals regarding these concepts and perhaps others. We also believe that certain reforms are required in the "escape clause" statute and in other areas of our trade laws such as the Generalized System of Preferences. We hope to work with other organizations on a broad package of trade reform measures.

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[1] A variation on this as it relates to subsidies exists in Brazil, which recently introduced a program whereby Brazilian textile raw material producers receive export subsidies when their product is used as an input in the manufacture of a product subsequently exported. In effect, the domestic sale of an input into an exported product is treated as if it were a direct export sale. The existence of this program has been confirmed by Brazilian officials and it is known to our government.

Deficiencies in the administration of the unfair trade statutes

Commitments for the effective implementation of the unfair trade statutes were made to Congress, to industry, and to labor in 1979 as part of the development of the national consensus that resulted in the Congressional approval of the Geneva negotiations and the passage of the Trade Agreements Act of 1979. Congress underscored many of these commitments and mandated courses of action by the Executive Branch in the 1979 legislation. A reorganization of trade functions, which our group actively supported, resulted in the transfer of responsibility from the Treasury Department, where resources to do an effective job were limited and where recourse to the countervailing the antidumping duty laws was considered protectionist, to the Commerce Department, where, we were all assured, a much better job would be done. The Office of the U.S. Trade Representative was given a revised Section 301 with which to work, together with a clear mandate from Congress that this section of the trade laws be used effectively.

The results to date have been uneven. Many groups from the far Northwest to the Silicon Valley to the agricultural and industrial heartland of the Midwest and Mid-Atlantic states to the labor-intensive areas of the East and the Southeast have been disappointed. Some us of fear (and actually see happening) that there is being lost public support for a liberal trade policy and of maintaining that support by actions that are widely perceived to be consistent, fair, timely, certain, and effective, in accordance with the law and previous commitments.

Let me recount some of the specific deficiences that have occurred in the administration of the unfair trade statutes. In doing so, let me point out that these are just a few in what is a large catalogue.

1. Acceptance of developing countries under the subsidies code

Commitments were made to Congress, to industry, and to labor that developing countries would not be accepted under the Subsidies Code and thereby given the benefits of an injury test under our countervailing duty statute unless they committed themselves to phase out their existing export subsidies in an agreed-upon timetable; not to increase existing subsidies, to extend subsidies to new products, or to introduce new subsidies; and to eliminate immediately subsidies on those products (mostly labor intensive, import sensitive articles) in which they were already competitive.[2]

But what has actually occurred?

Pakistan and India have been accepted under the Subsidies Code and given an injury test without any meaningful commitments to dismantle their subsidies.

Brazil and Uruguay have reneged on their commitments but are still granted an injury test.

Korea was accepted under the Subsidies Code based on unverified assurances that they did not maintain programs that were materially inconsistent with the Subsidies Code. The American Embassy in Seoul has documented a wide range of Korean subsidy programs and the Commerce Department has issued many countervailing duty orders against Korea, but that country still gets an injury test.

USTR has actively engaged in negotiating accessions to the Subsidies Code, as in the case of Mexico and Peru, after petitions had been filed with no injury test required. Fortunately for the petitioners who would have faced increased costs and delays of up to four months if these countries had been accepted under the Subsidies Code, Mexico and Peru were not willing to make even the limited commitments that the negotiators proposed.

2. Processing of petitions filed under section 301

Section 301 of the Trade Act of 1974, as amended in 1979, reflects Congress' determination that the U.S. aggressively enforce its rights under all trade agreements and that the President act against unjustifiable, unreasonable and discriminatory policies and actions of foreign governments. The President was given broad authority because of the wide variety of practices employed by our trading partners in their efforts to obtain a competitive edge for their industries at the expense of the U.S. Unfortunately there have been numerous problems relating to the handling by USTR of petitions under Section 301.

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[2] Statement of Ambassador A. L. McDonald, Deputy Trade Representative, to House Trade Subcommittee, Ways & Means Committee, April 27, 1979. He said: ". . . the benefits [of the Subsidies Code] include an obligation by foreign governments to eliminate export subsidies completely." House Doc. 96-13, p. 13. Statement of Richard R. Rivers and John D. Greenwald, the key U.S. negotiators of the Subsidies Code, as follows: "Because of the Subsidies Code, the LDCs will . . . accept discipline over export subsidies in the form of phaseouts of their programs." Law and Policy in International Business, Vol. 11, No. 4 (1979).

USTR imposes a burden on the U.S. petitioner to make an airtight case in the petition prior to acceptance of the petition for review, that is, to prove the entire case even before the 45-day period prior to initiation of a case. As in any trade action, certain information necessary to document unfair trade practices is often not available to petitioners prior to the filing of a petition, and obtaining that information from the U.S. and foreign governments is difficult, at best, outside of a 301 proceeding. Petitions which set forth a sound prima facie case but require some additional information or analyses may be rejected by USTR. At least part of the reason for this position stems from the requirement that the U.S. Government notify the GATT of its intention to proceed with a 301 investigation on the same day that USTR decides to accept a petition for review. Rather than using this approach, USTR could choose to accept petitions for review and then continue to work on establishing the best possible case.

USTR undertakes little in the way of independent analysis and appears ready to accept foreign government statements of fact without verification.

USTR also appears to have established an almost impossible threshold of proof with regard to redress from certain foreign unfair trade practices which burden or restrict U.S. commerce in the U.S. market, i.e., those practices which result in increased U.S. imports as a result of diversion of exports to the U.S. when other markets are closed and ours is relatively open. It is clear that USTR would prefer to see Section 301 as a vehicle to promote U.S. exports.

USTR is unwilling to find that a bilateral restraint agreement violates the most-favored-nation principle of the GATT.

USTR has taken the position that an industry claiming lack of foreign market access because of trade barriers should be able to demonstrate its ability to export to a foreign country with trade barriers, regardless of the severity of the trade barriers or their longevity.

USTR is unwilling to take action against other countries' GATT-bound tariffs regardless of the amount of such tariffs and their inhibiting effect on trade.

3. Extensions of preliminary determinations

The Commerce Department virtually automatically extends deadlines for preliminary determinations because an investigation is purportedly "extraordinarily complicated." While such extensions are allowed by the Trade Agreements Act of 1979, both the House Ways and Means Committee and the Senate Finance Committee made very clear that such extensions were to be rare and infrequent. But in 1982, we have counted 39 countervailing duty cases where extensions were made, or almost three-quarters of all cases. The House Committee report on the legislation states:

"In establishing the criteria under which a case can be found to be extraordinarily complicated, the Committee intends that *only the rare case will meet the criteria. As a result, it is expected that this provision will be used very infrequently.* The Committee's intentions are born of the concern that under current law the Authority too frequently and too easily exceeds the limits of a reasonable period of time within which to make determinations. Consequently, the Committee does not want this provision to be used as a way of avoiding the clear and reasonable time limits established in this bill for reaching a preliminary determination." (House Report No. 96-317, p. 52; emphasis added)

Commerce's extension of time before a preliminary determination is made is significant not simply because it defies the expressed intent of Congress. It is significant because such extensions allow importers more than two months of additional time to flood the U.S. market before a preliminary determination and the suspension of liquidation. The injured domestic industry which has filed a petition and abided by all relevant procedures and requirements can only stand idly by while imports are rushed into the U.S. market. Rarely does Commerce attempt to offset this by invoking the "critical circumstances" provision of the Act which would permit levying a countervailing duty on any unliquidated entries which entered during the 90-day period prior to the preliminary determination. In fact, the "critical circumstances" provision cannot by law even be applied in investigations involving countries not party to the Subsidies Code.

4. *Suspension agreements*

Although not used frequently, suspension agreements have recently become a more commonly used means of concluding countervailing and antidumping cases. Yet the process is fraught with problems.

Petitioners are consulted by Commerce but, even if they oppose the terms and conditions of a suspension agreement, Commerce may decide to finalize the agreement. The result for the petitioner is, that after spending considerable effort and money and after much time has elapsed since he brought the case, the petitioner finds the case concluded with a suspension agreement that is deficient in remedying the harm done.

In the case of the several suspension agreements with Brazil, they all have involved Brazil agreeing to impose an export tax equal to the net subsidy. But the export tax does not have to be paid upon export. It may be paid up to 45 days after the end of the month in which the export takes place. This could mean up to 75 days after export occurs. With a continuously depreciating cruzeiro, the export tax paid well after the date of export is, therefore, not equal in foreign exchange terms to the net subsidy. Commerce has refused to accept this objection to such suspension agreements.

There is not continual monitoring of suspension agreements. Verification occurs no more often than once a year, if then.

5. *Delays in receiving information under administrative protective orders*

A major area of concern in both countervailing duty and anti-dumping proceedings is the major expense and time required to obtain disclosure of confidential information subject to administrative protective order. First, there has evolved incredibly burdensome application requirements to obtain disclosure under a protective order. Then, an additional burden is imposed on the applicant because of the lack of any time deadline on the Department of Commerce for approving or denying such applications. As a result, Commerce may delay a decision on the application until the information sought is no longer of any use to the applicant in the administrative proceeding. The fact that the overall administrative procedure is subject to strict time guidelines mandates that disclosure applications be disposed of expeditiously; otherwise participation by parties to these proceedings are rendered meaningless and petitioners are denied proper representation.

The allowed tactic of delay in decisions on applications is aided and abetted by counsel for respondents, who often raise strenuous and complicated, yet nonsubstantial, objections to disclosure of information. This behavior can cause Commerce to choose the easiest path, which is to make no decision. This option, however, does not serve the interest of effective processing of cases based on the fullest information available.

6. *Administrative reviews*

Section 751 of the Trade Agreements Act of 1979 directs the administering authority to conduct an administrative review of antidumping and countervailing duty orders at least once during each 12-month period from the anniversary date of the CVD or dumping order. Congress specifically required an annual administrative review under the 1979 Trade Act in order to "expedite[] the administration of the assessment phase of antidumping and countervailing duty investigations." Prior law had not set forth a timetable for review of dumping or CVD orders.

Delays in the conduct of administrative reviews have been common.—Particularly in cases where administrative reviews find increased subsidy levels or dumping margins, delays in conducting the reviews make more difficult the implementation of new CVD or dumping orders. In a CVD case involving footwear from Brazil, an administrative review has just been completed for 1980. In a CVD case involving pig iron from Brazil, Commerce took three years to complete its "annual" administrative review.

Commerce does not routinely verify information received during an administrative review.—Section 776 of the 1979 Trade Act directs the administering authority to verify all information relied upon in making a final determination. This requirement has not been accepted by Commerce in administrative reviews under Section 751. Without verification, the administrative review loses a substantial amount of effectiveness. There has been no verification in the French stainless wire rod dumping case at least since 1974. Verification is of particular importance in cases involving suspension agreements and where a country, such as Brazil, has clearly not abided by its commitments. In a case involving leather wearing apparel from Colombia, the Commerce Department accepted information supplied by the Colombian government and central bank and, upon receipt of no comments from interested parties, determined that compliance with the suspension agreement had occurred.

7. Commerce Department regulations

Final regulations for a number of sections in the Commerce Department Regulations on countervailing and antidumping duties have yet to be issued, two year after the Commerce Department became the administering authority. Sections 355.1 through 355.4 of the final regulations on countervailing duties, for example, have not been issued and there remains a gap in the regulations. These sections relate to the determination and calculation of net subsidy among other issues. The final regulations on antidumping, Section 353.24, relating to fair value price comparisons in markets reflecting parallel pricing, have likewise been deferred.

The Commerce Department regulations include provisions which have no statutory basis.—At least one provision in these regulations is inconsistent with the statute. Section 355.32(b) of the Commerce Regulations, which relates to the "possible breach" of suspension agreements, is contrary to the legal requirements regarding suspension agreements in the Trade Agreements Act of 1979. Section 704 states, "if the administering authority determines that an agreement is being, or has been, violated, . . . then, . . . it shall . . . issue a countervailing duty order." Section 355.32(b), in contrast, adds a new dimension of unintential violations. In a recent case involving leather wearing apparel from Argentina, the Commerce Department proposed to exercise, for the first time, the authority in § 355.32(b). Argentina had clearly violated its suspension agreement and Commerce, instead of issuing a countervailing duty order, renegotiated the suspension agreement without statutory authority to do so.

Commerce has disregarded its own regulations.—In a dumping case involving cadmium from Japan, Commerce published a notice of a tentative determination to revoke the finding, based on a "commitment", by the Japanese producers. The "commitment," however, did not meet the requirements set forth in Section 353.54(e) of the Commerce Department Regulations. This section requires a commitment by foreign producers that if, following revocation, "circumstances develop which indicate that the merchandise thereafter imported is being sold at less than fair value," producers must agree to "an immediate suspension of liquidation and reinstatement of the [dumping] finding." The "commitment" made in a letter by the producers in this case, however, set forth a series of conditions before anythng may occur after resumed sales at less than a fair value, including a requirement that "there have been massive imports of cadmium from Japan over a relatively short period." This language was actually suggested to the Japanese by Commerce.

CONCLUSION

Mr. Chairman, we recognize that we have raised a number of contentious issues today. We also recognize the very real problems that will arise in attempting to develop a consensus when Congress considered major changes in our trade laws.

To those who say that trade reform should not be undertaken, or that it cannot be undertaken, or that now is not the time, we would reply that there is a welling sense of deep concern in American companies, in the American labor movement, and in American agriculture about the inability of the system to work to secure adequate redress under our trade laws. Perhaps even more fundamentally, too many plants have closed their doors and too many Americans are out of work for the problems to go away.

The political pressures are building, not just here in Washington, but across the country as well. Congress can begin to move now to meet those pressures or it can wait, perhaps a year or more, until they have become immense and irresistible. The choice is yours, not ours, but I trust that our testimony today suggests what our counsel would be.

Thank you.

AD-HOC LABOR-INDUSTRY TRADE COALITION (GROUP OF 33)

Amalgamated Clothing & Textile Workers Union, AFL-CIO;
American Apparel Manufacturers Association;
American Federation of Fishermen;
American Mushroom Institute;
American Pipe Fittings Association;
American Textile Manufacturers Institute;
American Yarn Spinners Association;
Bicycle Manufacturers Association of America, Inc.;

Cast Iron Soil Pipe Institute;
Clothing Manufacturers Association;
Copper and Brass Fabricators Council, Inc.;
Footwear Industries of America, Inc.;
Industrial Union Department, AFL-CIO;
International Ladies' Garment Workers' Union, AFL-CIO;
International Leather Goods, Plastics & Novelty Workers Union, AFL-CIO;
Lead-Zinc Producers Committee;
Luggage & Leather Goods Manufacturers of America, Inc.;
Man-Made Fiber Producers Association;
National Association of Chain Manufacturers;
National Association of Hosiery Manufacturers;
National Cotton Council;
National Handbag Association;
National Knitwear and Sportswear Association;
National Knitwear Manufacturers Association;
Northern Textile Association;
Scale Manufacturers Association, Inc.;
Synthetic Organic Chemical Manufacturers Association;
Textile Distributors Association;
United Food and Commercial Workers International Union, AFL-CIO;
Valve Manufacturers Association; and
Work Glove Manufacturers Association.

Mr. CONNER. We are here on behalf of the Group of 33, the name which has been applied to an ad hoc coalition of trade associations and labor unions which are deeply concerned about the proper implementation of the countervailing and antidumping duty statutes and other legislation dealing with unfair trade.

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We supported the MTN and the Trade Agreements Act of 1979, and we feel that we helped to develop the consensus in this country necessary for their adoption. We did so because we were convinced that the implementation of what was negotiated in Geneva would represent a giant step forward in providing American industry and labor with fair and effective recourse to our trade statutes.

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We wish to discuss each of these three major areas today.

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The first problem is, in a sense, a summation of the other four. I refer to our staggering balance-of-trade deficit. In 1982 this deficit widened to $43 billion from $40 billion in 1981. This year the administration believes that the deficit could be as high as $75 billion.

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As a Cabinet study of U.S. competitiveness in high technology industries pointed out last October:

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This takes me to the fourth point. While the United States has, in the main, earnestly worked for a more open world trading system, other nations, with few exceptions, have been maintaining or adding to myriad devices which distort trade and investment flows.

I am speaking not only of subsidy practices too numerous to count, but also of "targeting practices," which you have mentioned so often today, by which I mean a host of governmental devices to promote a national industry at the expense of its foreign competitors.

I wish to point out, Mr. Chairman, that subsidies and targeting not only increase exports to the U.S. market, but also, together with nontariff barriers, tend to diminish U.S. exports to countries where these practices exist and to third country markets as well.

One just might argue that all of these problems could be tolerated if the United States were making satisfactory progress in international negotiations to ameliorate them. Unfortunately, as we all know, it is not.

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Another area we suggest for reform: There is a substantial growing sense of frustration on the part of American industry, labor, and agriculture, as you have just heard, that they cannot secure effective action to achieve meaningful remedies to international trade practices which confer an unfair competitive advantage. Many who have tested the system have come away shaken by the recognition that such actions are becoming increasingly complex, costly, and uncertain as to the outcome.

They find themselves buried under difficult burdens of proof. They find the responsible executive agencies failing to pursue effective verification and investigatory procedures or to self-initiate cases despite a growing body of information on foreign trade practices available to the executive branch. Above all, they find the absence of will to enforce the statutes as Congress wrote them.

It is wrong, and naive, to suppose that we can continue as we have been, counting on international goodwill and a sufficient number of GATT meetings to diminish our trade problems. Essentially, the U.S. should pursue a two-track strategy of continuing to work for more open trade, while safeguarding basic American economic interest as protracted, exceedingly difficult negotiations proceed. In short, the United States must act decisively in its national interest. It must arm while it continues to parley.

Our group, Mr. Chairman, is in the midst of working out some detailed proposals for trade reform. We will be doing so with other groups which are equally concerned about the drift of U.S. trade policy. We hope to present these proposals to the Congress in the coming weeks. Today, however, I can advance a few concepts with respect to the trade practices with which the Group of 33 has always been principally concerned.

In this area, Mr. Chairman, we have four matters in mind. First, foreign practices, whether by governments or firms, which give foreign producers an arbitrary advantage distorting international competition, should be considered as directly actionable under our trade laws. This should include action against the practice of downstream dumping in which foreign suppliers of materials or components sell at dumping prices to manufacturers in their countries who are then able to export the finished product at a cost advantage due to their lower material costs.

I would like to give one example. Our association filed a countervailing duty case and won it against cotton yarn from Brazil several years ago.

Chairman Gibbons. Who was that?

Mr. Conner. Against Brazil. It was cotton yarn. We won the case, went through a series of annual reviews and found the duty reduced from 21 percent down to a current 3½ percent. Now the subsidies are much higher than that, but, as you no doubt know, Brazil has a little deal with the United States in which they have an export offset.

So even this was beginning to be a little ticklish for the administration, I suppose, and we just learned in the last week that Brazil has now instituted a new program called the "verde amarillo," the color of their flag. Basically what they are planning to do in textile products, and they may expand to other industries as well, is they will go downstream, in the case of textiles, to fiber and intermediate components going into fiber, and the subsidies will be placed there. So when the product is finally exported there will be no obvious subsidy on the end result. This announcement was just recently made by the Brazilian Government.

To move on to a second point, the executive branch should have, as a mandate the active monitoring of international practices and the self-initiation of action when evidence of trade distorting practices is found.

The burden of proof should be shifted from domestic to foreign interests, whether it be a government, an industry, or an individual firm, at least to the point where there results a more equitable sharing of the burden of proof.

Fourth, the actions taken by the executive branch should effectively prevent damage, and the U.S. industry or firm should be fully compensated for the damage done and for its costs in pursuing the action.

I would like to talk about deficiencies in the administration of the unfair trade statutes themselves. Commitments for the effective implementation of the unfair trade statutes were made to Congress, to industry, and to labor in 1979 as part of the development of the national consensus that resulted in the congressional approval of the Geneva negotiations and the passage of the Trade Agreements Act of 1979.

Congress underscored many of these commitments and mandated courses of action by the executive branch in the 1979 legislation. A reorganization of trade functions, which our group actively supported, resulted in the transfer of responsibility from the Treasury Department, where resources to do an effective job were limited and where recourse to the countervailing and antidumping duty laws was considered protectionist, over to the Commerce Department, where, we were all assured, a much better job would be done.

The Office of the U.S. Trade Representative was given a revised section 301 with which to work, together with a clear mandate from Congress that this section of the trade laws be used effectively.

The results to date have been uneven. Let me recount specifically deficiencies that have occurred in the administration of the unfair trade laws. First, acceptance of developing countries under the subsidies code. Commitments were made to Congress, to industry, and to labor that developing countries would not be accepted under the subsidies code and, thereby, given the benefits of an injury test under our countervailing duty statute unless they committed themselves to phase out their existing export subsidies in an agreed-upon timetable; not to increase existing subsidies, to extend subsidies to new products, or to introduce new subsidies; and to eliminate immediately subsidies on those products in which they were already competitive.

But what has actually occurred?

Pakistan and India have been accepted under the subsidies code and given an injury test without any meaningful commitments to dismantle their subsidies.

Brazil and Uruguay have reneged on their commitments but are still granted an injury test.

Korea was accepted under the subsidies code based on unverified assurances that they did not maintain programs that were materially inconsistent with the subsidies code. The American Embassy in Seoul has documented a wide range of Korean subsidy programs and the Commerce Department has issued many countervailing duty orders against Korea, but that country still gets an injury test.

USTR has actively engaged in negotiating accessions to the subsidies code, as in the case of Mexico and Peru, after petitions had been filed with no injury test required. Fortunately for the petitioners who would have faced increased costs and delays of up to 4 months if these countries had been accepted under the subsidies code, Mexico and Peru were not willing to make even the limited commitments that the negotiators proposed.

Moving to the processing of petitions filed under 301, Mr. Chairman, section 301 of the Trade Act, as amended, of 1979 reflects Congress determination that the United States aggressively enforce its rights under all trade agreements and that the President act against unjustifiable, unreasonable, and discriminatory policies and actions of foreign governments.

The President was given broad authority because of the wide variety of practices employed by our trading partners in their efforts to obtain a competitive edge for their industries at the expense of the United States. Unfortunately there have been numerous problems relating to the handling by USTR of petitions under Section 301.

USTR imposes a burden on the U.S. petitioner to make an airtight case in the petition prior to acceptance of the petition for review, that is, to prove the entire case even before the 45-day period prior to initiation of a case.

USTR undertakes little in the way of independent analysis and appears ready to accept foreign government statements of fact without verification.

USTR also appears to have established an almost impossible threshold of proof with regard to redress from certain foreign unfair trade practices which burden or restrict U.S. commerce in the U.S. market; that is, those practices which result in increased U.S. imports as a result of diversion of exports to the United States when other markets are closed and ours is relatively open.

USTR is unwilling to find that a bilateral restraint agreement violates the most-favored-nation principle of the GATT.

USTR has taken the position that an industry claiming lack of foreign market access because of trade barriers should be able to demonstrate its ability to export to a foreign country with trade barriers, regardless of the severity of the trade barriers or their longevity.

USTR is unwilling to take action against other countries' GATT-bound tariffs regardless of the amount of such tariffs and their inhibiting effect on trade.

Now, Mr. Chairman, I would like to talk to another issue that has been a problem, extensions of preliminary determinations. The Commerce Department virtually automatically extends deadlines for preliminary determinations.

In establishing the criteria under which a case can be found to be extraordinarily complicated, the Congress intended that only the rare case will meet the criteria. As a result, it was expected that this provision would be used very infrequently.

Commerce's extension of time before a preliminary determination is made is significant not simply because it defies the expressed intent of Congress. It is significant because such extensions allow importers more than 2 months of additional time to flood the U.S. market before a preliminary determination and the suspension of liquidation. The injured domestic industry which has filed a petition and abided by all relevant procedures and requirements can only stand idly by while imports are rushed into the U.S. market.

We have concerns about suspension agreements. Although not used frequently, suspension agreements have recently become a more commonly used means of concluding countervailing and antidumping cases. Yet the process is fraught with problems.

Petitioners are consulted by Commerce but, even if they oppose the terms and conditions of a suspension agreement, Commerce may decide to finalize the agreement. The petitioner finds the case concluded with a suspension agreement that is deficient in remedying the harm done.

In the case of the several suspension agreements with Brazil, they all have involved Brazil agreeing to impose an export tax equal to the net subsidy. But the export tax does not have to be paid upon export. It may be paid up to 45 days after the end of the month in which the export takes place. This could mean up to 75 days after export occurs. With a continuously depreciating cruzeiro, the export tax paid well after the date of export is, therefore, not equal in foreign exchange terms to the net subsidy. Commerce has refused to accept this objection to such suspension agreements.

There is not continual monitoring of suspension agreements. Verification occurs no more often than once a year, even if then.

Now, a little bit about delays in receiving information under administrative protective orders.

A major area of concern in both countervailing duty and antidumping proceedings is the major expense and time required to obtain disclosure of confidential information subject to administrative protective order.

Then, an additional burden is imposed on the applicant because of the lack of any time deadline on the Department of Commerce for approving or denying such applications. As a result, Commerce may delay a decision on the application until the information sought is no longer of any use to the applicant in the administrative proceeding.

I would like to move on to the matter of administrative reviews.

Section 751 of the Trade Agreements Act of 1979 directs the administering authority to conduct an administrative review of antidumping and countervailing duty orders at least once during each 12-month period from the anniversary date of the CVD or dumping order.

Congress specifically required an annual administrative review under the 1979 Trade Act in order to "expedite the administration of the assessment phase of antidumping and countervailing duty investigations." Prior law had not set forth a timetable for review of dumping or CVD orders.

Delays in the conduct of administrative reviews have been common. Particularly in cases where administrative reviews find increased subsidy levels or dumping margins, delays in conducting the reviews make more difficult the implementation of new CVD or dumping orders. In a CVD case involving footwear from Brazil, an administrative review has just been completed for 1980. In a CVD case involving pig iron from Brazil, Commerce took 3 years to complete its "annual" administrative review.

Commerce does not routinely verify information received during an administrative review.

Now a final word on the Commerce Department regulations. Final regulations for a number of sections in the Commerce Department regulations on countervailing and antidumping duties have yet to be issued, 2 years after the Commerce Department became the administering authority. Sections 355.1 through 355.4 of the final regulations on countervailing duties, for example, have not been issued and there remains a gap in the regulations.

Mr. Chairman, we recognize that we have raised a number of contentious issues today. We also recognize the very real problems that will arise in attempting to develop a consensus when Congress considers major changes in our trade laws.

To those who say that trade reform should not be undertaken, or that it cannot be undertaken, or that now is not the time, we would reply that there is a welling sense of deep concern in American companies, in the American labor movement, and in American agriculture about the inability of the system to work to secure adequate redress under our trade laws. Perhaps even more fundamentally, too many plants have closed their doors and too many Americans are out of work for the problems to go away.

The political pressures are building, not just here in Washington, but across the country as well. Congress can begin to move now to meet those pressures or it can wait, perhaps a year or more, until they have become immense and irresistible. The choice is yours, not ours, but I trust that our testimony today suggests what our counsel would be.

Chairman GIBBONS. Good, detailed testimony, Mr. Conner. As I listened it seems to me that most of your complaints, although not all, focused around what I will define generally as being unfair practices. Dumping and the subsidy practices.

Mr. CONNER. Right.

Chairman GIBBONS. I guess my first question to you is, would you agree with me we ought to dispose of them first?

Mr. CONNER. Yes, sir, we would agree with that.

Chairman GIBBONS. I don't say we ought not dispose of other proposals and other changes, but I am very much afraid that if we try to cure all the problems of trade at one fell swoop up here, we are going to get lost in the intricacies of it and complexities of it. It would seem to me that the most important thing is to crack down on the unfair practices and to send the message throughout the United States and the world that we are going to insist that we live up to these penalties for unfair practices, reduce the costs, increase the certainty, without reducing the fairness of these provisions. That is what my personal agenda would be. Would you like to respond?

Mr. NEHMER. May I make an additional comment? I think we would certainly agree that this is tackleable and should be number one on your agenda, but, as you heard this morning, Mr. Chairman, there is a certain relationship between the escape clause insofar as we need reform there and the unfair trade laws. The statistics with regard to the escape clause cases are horrible.

Chairman GIBBONS. I know they are.

Mr. NEHMER. Only 9 out of 46 cases have resulted in import relief.

Chairman GIBBONS. And it will be more difficult to unravel that in my opinion. I think we have reached a consensus nationally that the unfair practices have got to stop. I realize that there is a relationship between 201 or escape clause actions and those on antidumping and subsidies.

Ms. HOWARD. I would also add, Mr. Chairman, that when you are considering legislation to look at the area of unfair trade practices, that your review should not be limited to the subsidy and the antidumping legislation, because 301, which was meant to deal with unfair trade in the export context mainly, that should be examined too, because there are problems in that area as well.

Chairman GIBBONS. I know, and I want to get to that.

I am trying to focus in on and build attention on the matters that are not infected by as much administration attention such as 301, because they will be easier to deal with in the legislative process. We may go over into the 301 cases. When I talk about unfair practices, I am talking about the specific practice of targeting industries to predatorily gain markets. That has always disturbed me as being just a sophisticated disguise for the old bounty or grant subsidy type of arrangement that the Congress railed against almost 100 years ago. You have given us some good, concrete matters and——

Mr. NEHMER. We are only scratching the surface, Mr. Chairman, you know.

Chairman GIBBONS. But I think it is more important to scratch it effectively than to wallow all around out in that vast territory and not accomplish a whole lot. That is my objective now. I think it is better to send a good clean, clear unequivocal message than splatter all over the landscape and perhaps not get it all done. That doesn't mean that we shouldn't do these other things. And it doesn't mean we won't do them, it just means in setting priorities for action we probably ought to concentrate on these areas that we have agreed on.

Mr. NEHMER. What I meant was, to clarify, in our listing of the so-called horror stories, it was just scratching the surface with respect to the unfair practices. There are a lot of others. If we had more time we would have written more.

Chairman GIBBONS. Yes, I understand. There are enough horror stories out there for me already. I know you could find some more. Mr. Pease.

Mr. PEASE. Mr. Chairman, I don't have much in the way of questions. I would like to compliment the panel for their testimony. I was particularly interested in your conclusion about the welling sense of deep concern among companies, labor and agriculture over the inability of the system to work. I think it is bad enough that your markets are invaded by imports from overseas, it is bad enough for the laid-off workers. But when the laws that are on the books don't seem to give you relief, I can imagine the frustration.

I think it is difficult enough in these troubled economic times for Members of Congress to defend the concept of free trade, but at least there is a justification for it in principle. But I think we cannot defend the inability of Americans to get redress from their own Government through their own laws. It seems to me that no matter what a person's opinion might be about free trade, everybody ought to be able to agree that if a remedy exists, that remedy ought to work. People ought to have access to it and there ought to be a situation where people can get a decision on an expeditious basis, either you have a case or you don't have a case.

Let me ask you the only question I have. Would you comment on the testimony this morning and the question I raised with other witnesses as to the attitude of the Commerce Department and the ITC. In your experience when you approach the Commerce Department or ITC in these cases, do you have the feeling that they are leaning over to be on the side of the American companies, the American workers, or that they are straight down the line neutral, or that they are leaning toward being on the side of the importers?

Mr. CONNER. Sir, I just came through a proceeding involving Peru on a textile product. It was as has been somewhat characterized, a sort of a nightmarish horror story situation. At almost every turn as we proceeded through that case, after the delays; the 65 days and all, right down to the final day of the deadline that they had to make a decision there were efforts going on in numerous areas to try to find a way not to have to come to that final conclusion.

The fact of the subsidies were very well documented. They were documented in other records as well as in our own investigations. But to go through some of the types of problems that we experienced and the delays and the expense, you have to go through when they throw up these obstacles is difficult. You have to make your case and you have to come to the Congress or Members of Congress and say, you know, we are getting off track here, can you help us out a little bit?

It is cumbersome for everybody. If you are not on top of it you can lose by default very easily.

I can well understand the problems for a small organization—and we have been through four of them—the most expensive one we have had in terms of cost is already well over a quarter million dollars and it is still under appeal in the Court of U.S. International Trade.

So it becomes perplexing for myself with a trade association to have to go back to my members. They say you told us in 1979 what this law was going to do and all these things, and why is it not working?

Why is it that we have to spend all this extra money?

Why is it that we have to wait so long for relief?

Part of the reason is the very thing you pointed out, that is the procedure has been for the Government to go as far as they are able in the direction of the other side of the question to be sure that they have absolutely every opportunity to get the best part of the deal and it is horrifying and, yes, we have had those problems.

Mr. NEHMER. May I answer, Mr. Pease, based on my experience.

We have been involved in some 60 countervailing duty and dumping cases as economic consultants. We have been the economists for five of the nine industries that have received import relief under the escape clause.

Let me just compare the two agencies that you ask about. I would give high marks to the ITC compared to the Department of Commerce. The staff of the ITC has improved very substantially over the years, and you do get, I think, very objective and thorough attention. The fact is that everything is on the public record, nothing is hidden and I think the ITC should be complimented for the work they have done.

Not that I have agreed with all the decisions they have made, but that depends on who the commissioners are to a large extent. But in terms of handling a petition I think the ITC gets high marks.

I cannot say the same about the Commerce Department. If I were teaching college and grading the Commerce Department I would give it at best a C and maybe a C minus.

I think our testimony explains why. Yesterday you heard the Commerce Department say that it had not missed a deadline during the last year. Yes, that is probably correct. But the administrative reviews are what determine what actually is going to be paid by the importers against the estimated countervailing duty or dumping duty, and those have been delayed inordinately. In the most recent preliminary determination—an administrative review involving Brazilian footwear—this one so boggles my mind I have to mention it to you—one of the subsidy practices is financed by the U.S. Government under the Alliance for Progress. Because it is the U.S. Government that is financing it, they are dismissing it as an export subsidy even though it is money that is dished out by the Brazilian authorities.

That is the kind of thing we run into with the Commerce Department.

Ms. HOWARD. I might just supplement what Mr. Nehmer has said. I have been practicing in the international trade field for almost a decade and have represented a variety of industries, labor-intensive, capital-intensive. There is a constant complaint that they don't understand why their government doesn't want to help them. They come away from meetings with executive branch officials and they are really concerned, disturbed, that there is resistance when they feel they have a legitimate claim, especially if it is an unfair trade practice; that their government doesn't want to listen, doesn't want to help.

Mr. PEASE. Is this attitude of which you speak common to all of the administrations? Has there been any change, any waxing and waning, ups or downs over the last 10–12 years?

Mr. NEHMER. I might say that the difference between Commerce and Treasury was a very big issue a few years ago, in that Commerce has more people and is devoting more resources to the job, but the former chairman of this subcommittee, Mr. Vanik one day in a hearing on the reorganization asked a panel of people, aren't you just transferring these people from the Treasury Department to the Commerce Department, and how is that going to change things?

I argued a bit with him, I must say, next time I see Charlie Vanik I have to apologize to him.

Mr. **Pease**. He was right.

Chairman **Gibbons**. That is what happened, the civil service system just transferred them over.

Mr. **Pease**. Is it your opinion, let me ask, to what do you attribute this attitude, this unhelpful attitude on the part of the Commerce Department?

Mr. **Conner**. I think part of the problem is that some of the experiences that they have had on a couple of cases is you don't really limit the issue to the petition or what is at stake.

Foreign governments go to various representatives of the U.S. Government outside of the people who are necessarily doing the investigatory work, they see the Ambassador or whatever, and this all begins to work backwards as to what we can do to help this group or that county or they have this problem or that one. I can give you a specific, not publicly, but I can give you cases where definitely you have felt the impact of the State Department, they come into the trade area on this.

I serve as an advisor in a number of areas involving some of the bilateral negotiations and in fact always the State Department is represented there as part of that team, and you sense that somewhere in the back halls there is something going on that is not very obvious to you.

Mr. **Pease**. Can you suggest a remedy for that? Would you take this out of the hands of the administration altogether and put it in an independent agency or in an arm of the Congress rather than the Commerce Department?

Mr. **Conner**. My personal feeling is that now is not the time for another reorganization. I think that has been done. You cannot keep reorganizing over and over and over.

I think that part of the real problem is that really you are going to have to take more of the discretion out of it so that there is some predictability in the way it is going to be administered and the way the rulings will be made and how they will handle these things. I think that is probably the step that needs to be taken.

Ms. **Howard**. If I might just supplement his comments, I think there are some reasons behind why we have such frustration with administrations, whether Democrat or Republican. First of all, in some quarters—this was specifically in the Treasury Department and still persists in various offices in the Government—a strong belief that low prices regardless of whether they were caused by unfair or fair trade practices are good for the United States. Even if they put industries out of business.

I think that is shortsighted and I think the theory is—at least in the Halls of Congress and under international law—that subsidized prices or dumped prices are injurious in the long run. I am not sure that that is recognized around the halls of the administration. They feel that low prices regardless of their effects on domestic industries should be encouraged, even if they are resulting from unfair trade practices.

I also think that the United States has taken the leadership role in trying to open the world trading system to be fair, free, and open. Unfortunately, I don't think the rest of our trading partners have followed. I think we need some realistic evaluation of what is going on in the world—the borders that are closed to our exports, the subsidies hurting our industries.

While we are still trying to beat that drum for free trade we are being naive in the short run and losing industries because we keep fighting the good fight but no one is following.

Mr. **Nehmer**. If I may make an additional comment, Mr. Pease. I think you touched on it in the question of discretionary matters. On the question of an extension of time for preliminary determinations, Congress, in the law and in the legislative history of both the House and Senate, made it very clear that the case had to be extraordinarily complicated and included provisions to limit discretion. Of all the limitations in the act, that had the toughest language. As we actually counted the times in 1982 in countervailing duty cases when they extended the cases by 65 days, there were 39 of them, three-quarters of all the cases. That is almost a knee-jerk reaction. That has an adverse effect on the petitioner because imports up to the preliminary determination, assuming there is an affirmative determination, don't face the extra duty.

Commerce latched on to that authority and brushed aside the criteria that you established just to get themselves the extra 65 days. Now they said to you, I think in one testimony yesterday, that they find the time limitations are too tight. They were tied up with a lot of steel cases and they had to concentrate their staff on steel. Perhaps the resources were not great enough to do this job.

But if you give them any degree of discretion it will be used as they see fit.

Mr. **Pease**. Thank you very much.

Thank you, Mr. Chairman.

Chairman **Gibbons**. Just concentrating now on the antidumping and countervailing duty statutes, are there any steps we can leave out?

Ms. **Howard**. It is my own personal opinion that the preliminary injury findings by the ITC could be eliminated. This is a new proceeding with the 1979 Trade Act and a great deal of resources—as a lawyer I can tell you how much time and effort as well as economic resources—go into preparing for those preliminary injury conferences.

They are meant to be conferences but they are hearings and it takes a lot of time and, therefore, expense, in order to prepare for them.

I would think that if a petitioner made a prima facie case of injury in the petition that that should be sufficient to initiate the investigation, have the preliminary and final less than fair value or subsidy determinations and then have one final injury determination. That would save a lot of cost.

Mr. **Nehmer**. If I may put my 2 cents in, Mr. Chairman, one action that could be taken that would reduce costs and transfer a part of the burden of proof to the foreigners—you have heard a lot about both things today—one of the most costly parts of the case, and time-consuming, is to determine the home market price in a dumping case or what the margins of government subsidization are.

The Commerce Department has the authority to move immediately to a constructed value basis. The Commerce Department through the petitioner could take the various inputs in the manufacturing process and construct the value of the imported product that is alleged to be dumped or subsidized. Assuming that a certain margin exists between that and the actual selling prices in the United States from abroad, the Commerce Department can put this information then to the foreign respondent and say you tell us if these calculations are correct. You have the burden of responding to it.

What that does is cut out a lot of the time and expense in developing what the home market prices are in Japan or Taiwan, Korea, Brazil, whatever, and it does transfer part of the burden to the foreign entity. That is one thought.

Working with your staff we can come up with a few other ways of shortening the process.

Chairman GIBBONS. We would be happy to receive those ideas because as you pointed out in 1974 and again in 1979, we changed these laws believing we were moving in the right direction.

Unfortunately, to our dismay, we now find we have not done the job. Perhaps we never will be able to do the job in final form because these things shift as we shift.

But it certainly is an inordinate amount of time and burden to place upon people. All businesses, impacted businesses and small businesses, particularly, are in a bad position for getting relief, getting justice.

I have heard complaints, too, of that primary injury finding because I know that if you flunk out on that one you are out of the process. Other lawyers have told me that that seems to be an unnecessary step as far as their clients are concerned.

Does the U.S. Government provide the information you need that is reasonably needed to prepare your case? Do you know of other governments providing more or what could we do?

Ms. HOWARD. I think I may be—this may be a little flip but other governments don't require as much information in order to place a case.

Chairman GIBBONS. I realize that, you did flip.

Ms. HOWARD. I apologize.

Chairman GIBBONS. I didn't mean that in a derogatory way.

Mr. NEHMER. When we bring a case or a client brings a case we do get a certain amount of information through the dispatches, airgrams from the American Embassy. Several countervailing duty cases have been filed on the basis of airgrams from the Ambassador from Seoul as to how Koreans subsidize their industry.

We cannot rely solely on that. Normally research is done abroad to get the necessary information and from other sources that may be available.

But I am not complaining really about the availability of unclassified information. The key thing on information is when a case has been brought and accepted and it is going down the road, the difficulties that lawyers and we are facing representing domestic interests in getting access through administrative protective orders in accordance with the regulations of the Commerce Department, to the confidential information that was filed.

It is now a much more burdensome thing than it was before. So time goes by and then the other time limits move forward and we cannot use that information in order to do our own analysis to challenge the dumping margins or the subsidy margins. This is a problem facing us now at the Commerce Department and other agencies in a couple of cases.

Chairman GIBBONS. Thank you very much.

Any consultation you would like to have with the staff—that applies also to all the rest of you appearing—we would welcome since we certainly want to get as much as we can from you.

Our last witness today is a constituent of mine, CF Industries. You are headquartered in Mr. Crane's district, but you have large operations in my area. I want to apologize to you. I have 12 minutes left but I will read everything that you have here.

I apologize for keeping you so long.

STATEMENT OF DONALD V. BORST, SENIOR VICE PRESIDENT, INTERNATIONAL BUSINESS DEVELOPMENT, CF INDUSTRIES, INC.

Mr. BORST. Thank you, Mr. Chairman.

Chairman GIBBONS. I am aware of the problem that the industry is in, too. I know of some of the problems.

Mr. BORST. I am Donald Borst, I am a senior vice president with CF Industries which is headquartered in Long Grove, Ill. My responsibilities include business development. CF Industries was organized by regional agricultural cooperatives to provide fertilizer to their farmer patrons. CF is owned by 16 regional cooperatives located throughout the United States and in two Canadian Provinces. As one of the largest manufacturers of chemical fertilizer in North America, CF distributes a significant portion of the total plant food requirements to more than 1 million farmers in 45 States and the Canadian Provinces of Ontario and Quebec.

CF Industries appreciates this opportunity to testify about the effectiveness of the trade remedy laws and efforts to improve the process. Our testimony will focus on what we consider to be a unique and emerging trade problem—the use of cost-price squeezes against U.S. companies like CF by foreign monopolists with low-cost access to cartelized raw materials.

We will then examine the inability of trade remedy laws to deal with this emerging problem and the confusion over which trade agency has jurisdiction to address it. Finally, we will discuss specific options which are intended to provide a clearer indication of which agency and which law are the proper means of combatting new types of trade malpractices such as the cost-price squeeze which forced CF Industries to close three ammonia plants in October and November of last year.

A CRITICAL EMERGING TRADE PROBLEM: THE COST-PRICE SQUEEZE OF U.S. PRODUCERS BY FOREIGN MONOPOLISTS OF RAW MATERIALS

U.S. industry must rely increasingly on foreign sources of supply for substantial amounts of critical raw materials. Import reliance would present little peacetime difficulty in a world trading system governed by principles of free trade. Under market conditions, competition among producers would drive prices down to levels of long run average cost, and reliable supplies would be available to all raw material users.

Unfortunately, that is not the world we live in. Today, foreign producers, often assisted by their governments, increasingly look to cartels to control the price and supply of basic raw materials. Such cartels already include oil and natural gas, and could well extend to uranium, copper, bauxite and other minerals essential to many U.S. industries.

While price-fixing and related cartel activities are serious violations of U.S. antitrust laws, U.S. laws cannot effectively break up foreign cartels. In the *Machinists* case, one U.S. court has held that foreign government participation in the operation of the OPEC cartel protected it from the reach of the U.S. antitrust laws by the "act of state" doctrine. In addition, the participation of foreign governments in an international uranium cartel that operated in the 1970's has stifled the granting of relief even against some cartel participants who are within U.S. jurisdiction.

While U.S. courts cannot break up foreign cartels, the U.S. Government has to a limited degree sought to ease their harmful effects upon the United States. Recognizing the direct danger to national security of sudden critical materials supply disruptions caused by unfriendly foreign governments, the U.S. Government has been motivated to engage in extensive stockpiling and crude oil storage. The stockpiling of these critical raw materials, costing billions of dollars, has been the only protection against such supply disruptions.

Stockpiling, however, cannot prevent other, equally serious effects of monopoly pricing on U.S. industries and consumers, and on the national security.

A critical threat posed by foreign monopolists, and one not yet addressed to U.S. trade authorities, is the threat to U.S. companies dependent on cartelized raw materials. These U.S. companies are forced to pay world monopoly prices for raw materials. This condition, though by itself undesirable for U.S. producers and consumers, might be tolerable if all competing raw material processors were in the same position, each forced to pay the monopoly price for their vital raw materials.

Even though the prices of final products would be inflated by the monopoly prices of raw materials, processing would at least continue to be done with maximum efficiency.

Unfortunately, however, competing processors are not in the same position with respect to their raw material costs. The same foreign producers who cartelize raw material markets can and do enter the downstream processing market, producing final products that they sell for import into the United States. Such integrated foreign producers are not forced to pay monopoly prices for raw materials, but instead obtain those materials at cost. This cost advantage gives the foreign producer tremendous discretion over the pricing of its final product.

Without incurring any out-of-pocket losses, foreign producers can sell finished goods in the United States and drive the market to price levels that do not permit U.S. processors to recover even the raw material costs being imposed on them. This cost-price squeeze can destroy the U.S. industry, regardless of its efficiency, and permit the foreign monopolists to move downstream to dominate the formerly competitive U.S. market.

Recent developments in the U.S. ammonia industry vividly illustrate this problem. Ammonia is an essential source of nitrogen fertilizer for U.S. agriculture. Natural gas is the primary feedstock for producing ammonia, representing by itself, more than 70 percent of the cost of ammonia production. Without question, natural gas is the most important cost input for nitrogen fertilizers.

Because natural gas and oil are generally interchangeable sources of energy, the marginal price of gas has been bid up to the OPEC cartel price of oil, on a Btu equivalent basis. With decontrol of U.S. gas prices and expiration of long-term low-cost gas contracts, U.S. ammonia producers increasingly are forced to pay the OPEC equivalent price for gas.

Paying these prices, U.S. ammonia producers, who are among the most efficient in the world, are facing unmatchable competition from foreign gas producers who have entered the ammonia business. Foreign producers from Mexico and Russia as well as other countries, have access to gas at cost. Without the need to incur any out-of-pocket losses themselves, foreign producers price their ammonia in the United States at levels so low that competing U.S. producers cannot recover even their natural gas costs.

This cost-price squeeze imposes enormous cash losses on U.S. producers, who are forced to close plants and lay off their work forces. If present trends continue, the total U.S. ammonia industry will be effectively noneconomic before 1987. U.S. farmers will then be entirely dependent on foreign producers including countries such as Mexico and Russia for an essential fertilizer.

Unless foreign producers are required to price downstream products at a price comparable to the cartelized prices they charge for raw materials, what is happening to CF Industries and the U.S. ammonia industry can happen to the petrochemical industry, the aluminium industry, or any other U.S. industry dependent on imported raw materials.

INABILITY OF TRADE REMEDY LAWS TO ADDRESS THIS EMERGING PROBLEM AND CONFUSION OVER WHICH TRADE AGENCY HAS JURISDICTION

U.S. ammonia producers have sought to bring the cost-price squeeze problem to government attention in a number of ways. In response to low-priced ammonia imports from Russia in 1979, U.S. producers initiated an action under section 406 at the International Trade Commission. This action did not result in any relief.

Two additional proceedings were initiated in late 1982 against PEMEX, the Mexican state-owned oil, gas and petrochemicals monopoly. Several producers filed a countervailing duty petition at the Commerce Department, alleging that PEMEX's access to natural gas at lifting cost for ammonia production constituted a subsidy from the Mexican Government. The Commerce Department investigation is pending.

Also CF Industries filed a complaint with the International Trade Commission, alleging that PEMEX engages in a cost-price squeeze that violates section 337 as "unfair acts and practices" in the import trade. After delaying decision for 7 weeks, the ITC voted on January 27, 1983 to dismiss CF's complaint. Although CF believed that the broad mandate of sction 337 provided the ITC the best opportunity to deal with an emerging trade problem, the ITC concluded that CF had not alleged a technical interpretation of section 337.

The ITC also construed CF's complaint to raise the dumping issue, even though the Commerce Department official in charge of administering the dumping law has indicated a contrary view.

This diversity of activity by producers clearly reflects the fragmented jurisdiction over trade remedies among several agencies as well as the difficult problem of fixing residual jurisdiction for problems not specifically contemplated when the trade laws were enacted.

The conflicting views of the trade agencies illustrate that the problem is not one that is simply in the minds of the complaining producers. Once again, CF's problem is an example of the broader concerns presented by divided jurisdiction and legal remedies.

CONGRESSIONAL OPTIONS

Based on our own experience, CF Industries believes that several options must be reivewed by the Congress.

The Congress can clarify the scope of section 337 and make plain to the ITC its responsibility to remedy all those trade malpractices which threaten U.S. industry, regardless of whether they fall technically within the proscriptions of U.S. domestic law. This is the simplest and quickest solution. It would allow the problems to be evaluated on the full hearing record prescribed by section 337.

It would permit public interest factors to be weighed in determining a remedy, and it would permit the President to bring his foreign relations judgment to bear on such remedies. It would not require legislation.

The Congress can consider unifying current trade remedies into a single code of trade malpractices under a single administrative framework. This solution would avoid the current situation where agencies can define themselves out of facing the issues and domestic industries can be run around endlessly.

Finally, the Congress can specifically address the problem of cost-price squeeze and fix the responsibility for dealing with it by legislation. The cost-price squeeze problem is already upon us; it is destroying the U.S. ammonia industry and threatening other vital industries. The Congress must take action to insure that this unfair tactic is met and defeated.

Thank you very much, Mr. Chairman. I will be pleased to answer any questions that you may have.

Mr. **PEASE** [presiding]. Thank you very much, Mr. Borst.

I have just a couple of questions.

Can you give me some idea from your own experience what the difference is between a cartelized price and the cost of natural gas which is the raw material you deal with?

Mr. **Borst**. A good example, Mr. Pease, in the case of Mexico, when they export natural gas to the United States, they charge $4.94 per million Btu's which is in line with the OPEC value of energy.

On the other hand, when they supply natural gas to their own State-owned ammonia industry they charge something like 53 cents or less, like one-tenth, then they turn around and take that ammonia and compete with companies in the United States who are being forced to pay the raw material price that is ten times as high.

In fact, two of the plants that we had to close were receiving indirectly through the interstate pipeline system, high priced Mexican gas.

Mr. **Pease**. How many plants do you have in your company?

Mr. **Borst**. We have operating at the present time a large nitrogen complex in Louisiana with four ammonia plants and associated upgrading facilities; we have an ammonia plant operating in Terre Haute, Ind.; and we have a jointly owned nitrogen venture in Western Canada which we own jointly with Canadian cooperatives.

Mr. **Pease**. Do you have any figures on the pattern of imports of fertilizer ammonia that would show a pattern that they are increasing in domestic sales or decreasing?

Mr. **Borst**. We do have data which I would be happy to submit to the committee.

[The information follows:]

U.S. NITROGEN IMPORTS (NITROGEN CONTAINED IN ALL PRODUCTS)

[Thousands short tons nitrogen]

	Canada	Mexico	Trinidad	U.S.S.R.	Other	Total	U.S. agriculture consumption	Total as a percent of U.S. agriculture comsumption
Fertilizer year:								
1976	448	12	160	15	637	1,272	10,412	12.2
1977	846	36	167		942	1,991	10,647	18.7
1978	1,007	100	213	99	602	2,021	9,965	20.3
1979	1,012	313	272	371	307	2,275	10,714	21.2
1980	990	316	315	761	300	2,682	11,407	23.5
1981	931	223	298	921	181	2,554	11,924	21.4
1982	800	520	260	650	200	2,430	11,079	21.9

IMPORTS OF ANHYDROUS AMMONIA INTO THE UNITED STATES

[Thousands of short tons NH_3]

	Canada	Mexico	Trinidad	U.S.S.R.	Other	Total
Fertilizer year:						
1976	132	14	161	18	442	767
1977	490	44	171		263	968
1978	542	122	230	121	39	1,054

IMPORTS OF ANHYDROUS AMMONIA INTO THE UNITED STATES—Continued

[Thousands of short tons NH_3]

	Canada	Mexico	Trinidad	U.S.S.R.	Other	Total
1979	544	378	303	451	43	1,719
1980	540	384	344	925	20	2,213
1981	409	272	318	1,122	28	2,149
1982	555	609	261	674	15	2,114

Mr. **Borst**. I would say the key thing to be noted here is that ammonia is a fungible commodity so the lowest priced increment sets the price for the market. The last boatload sets the price that day for the whole industry for that product.

So it doesn't take a lot of imports to really destroy the economics of the total U.S. industry.

Mr. **Pease**. What you are saying is that even though imports of ammonia might amount to only 5 or 10 percent that the import price becomes the domestic price as well?

Mr. **Borst**. That is correct. That is correct. The total imports I think if I recall correctly are probably on the order of 12 to 15 percent and this sets the going trading price of ammonia on the gulf coast which is then reflected all over the U.S. nitrogen industry.

Mr. **Pease**. I see.

It is sort of an interesting situation. I was not very much aware of that. The complaints we have heard over the years since I have met with members of the European Community have been about the unfair subsidy of low-priced natural gas in the United States as it becomes a raw material for textile manufacturing. Do you think that we have been unfairly subsidizing our natural gas prices?

Mr. **Borst**. I would say that in the past natural gas prices were held at an unrealistically low level. I think that is generally recognized. That is being corrected rapidly with the NGPA. The prices now are at essentially the clearing level for new contracts or incremental purchases which are much in line with the OPEC-set value of energy.

Mr. **Pease**. One of your suggestions is that Congress could unify current trade remedies in a single code of trade malpractices under a single administrative framework.

Do you have any suggestions for what that single administrative framework would be?

Mr. **Borst**. I wouldn't have any specific suggestions on that. I would just indicate the experience we have recently had before the ITC. We were essentially given the runaround for 7 weeks as to whether this belonged at Commerce or ITC, whether it was a valid complaint. We were so frustrated that we went to the Hill and various Senators and Congressmen I believe sent some 26 letters over to ITC which they essentially laughed at.

They didn't seem bound to respond. In fact, without our complaint ever having been established as the subject of investigation the ITC was receiving prepared testimony from intervenors regarding the respondents' position. It is a very strange procedure involved there. There must be some better framework that would require the regulatory administrative agencies to apply the laws, the spirit as well as the letter of the law.

Mr. Pease. You were here earlier and heard the previous testimony. What has been your experience as to the basic attitude of the ITC or the Commerce Department in terms of being helpful or unhelpful to petitioners like yourself?

Mr. Borst. Mr. Pease, it is a mixed bag. The people at the ITC, some of the industry specialists have been most helpful and have personally expressed their dismay at what is happening, modern plants here are being shut down and plants being built in foreign countries based on lower-priced gas.

When you get to the upper echelon things shift into a different area of concern and because of "extraordinary circumstances" you don't seem to be able to get anybody interested in doing anything about something that has "Mexican" in it.

Perhaps that has something to do with the politics and financial problems of Mexico.

With respect to Commerce, I cannot directly comment on that. My awareness is that the CVD by other producers has been delayed and delayed and I am not sure where it is going.

Mr. Pease. Presumably this competition from Mexico is low-priced ammonia and results in lower priced fertilizer, is that a fair statement?

Mr. Borst. That is a fair statement, Mr. Pease, and to the extent that these are terrible times on the farm, lowest farm income since the 1930's, the low-priced fertilizer is a mixed blessing for the farmer. The question is will there be any domestic ammonia plants to supply him nitrogen fertilizer down the road if they are all shut down? He will be totally dependent on suppliers outside the United States and our fear is that we will be looking at something like OPEC and a low-priced penetration mode.

We have had direct experience with this, in 1979 the Soviet Union in order to penetrate the U.S. market was supplying ammonia all the way from Russia to the United States charging less than $100 a metric ton. After they had achieved market penetration that they apparently wanted at that time they insisted upon $200 a metric ton, well in excess of the price that was currently being paid on the market at that time.

So it is a matter of national security in our opinion. Nitrogen is so vital to the whole U.S. agricultural sector, to our productivity that we just can not let it become a captive of foreign governments or foreign-controlled organizations.

Mr. Pease. OK, Thank you very much, Mr. Borst.

We appreciate your testimony.

This concludes our first 2 days of hearings on our trade remedy laws. We have many more witnesses who have requested to appear on this matter and we will schedule further hearing dates as soon as possible.

In the meantime we will keep our record open for anyone who wishes to submit written statements or further information.

This concludes our hearing for today. Thank you.

[Whereupon, at 3:11 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

OPTIONS TO IMPROVE THE TRADE REMEDY LAWS

WEDNESDAY, APRIL 13, 1983

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, D.C.

The subcommittee met at 2 p.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Good afternoon, ladies and gentlemen. Today we resume our hearings on U.S. trade remedy laws to provide relief from unfair trade practices under the antidumping and countervailing duty statutes and under section 337, from fair competition under import relief and national security provisions, and foreign unfair practices under section 301.

In particular, we are interested in determining how our unfair trade practices laws can be made to deal more effectively with unfair competition and so-called industrial targeting. We also want to consider how these laws could be made less costly and time-consuming and provide greater certainty of effective relief.

These hearings will continue tomorrow and then again on next Tuesday, April 19, and will probably conclude on May 4. Each day we will begin the hearings at 9:30 a.m. As in the past, witnesses may summarize their testimony with the understanding that their entire statements will be printed in the record.

Our first witness today is our good friend and very fine Representative from Pennsylvania, Mr. Joseph M. Gaydos, who is the former chairman of the Congressional Steel Caucus.

STATEMENT OF HON. JOSEPH M. GAYDOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND CHAIRMAN OF THE EXECUTIVE COMMITTEE, CONGRESSIONAL STEEL CAUCUS, ACCOMPANIED BY WILLIAM PURVIS, AN ASSISTANT, AND PHILLIP OLA, STAFF DIRECTOR OF THE CONGRESSIONAL STEEL CAUCUS

Mr. Gaydos. Mr. Chairman, I want to thank you——

Mr. Schulze. Mr. Chairman, if I may, before the gentleman begins I would like to also welcome the chairman of the Pennsylvania delegation, who is well known for his eloquence on this subject and I appreciate the opportunity to hear his views.

Mr. **Gaydos**. I thank my colleague from Pennsylvania and I appear here, Mr. Chairman, as the chairman of the executive committee of the Steel Caucus.

Mr. Chairman, I want to congratulate you, for the record on your extensive work throughout the world on this very delicate matter. I want you know that we sincerely appreciate it. You have been very stable. You have been a good rudder for the ship. Sometimes we get emotional on our side, but you have been very understanding and you have quieted the waters; and hopefully as a result of your professional approach we are going to ultimately solve this problem. I want you to know that we appreciate it.

Chairman **Gibbons**. Mr. Gaydos, you are very fair and you are very fine to say that and I appreciate it. I appreciate the work of the Steel Caucus. I think it is necessary to bring these problems to our attention and to focus our attention on them, and so I enjoy working with you.

Mr. **Gaydos**. I have, Mr. Chairman, if I may, a little over a 10-minute statement that I would like to give.

Chairman **Gibbons**. You just go right ahead any way you want to proceed.

Mr. **Gaydos**. All right, Mr. Chairman.

I understand that in the merchandise trade deficit of the United States last year our deficit with Japan, Canada, and the LDC's was around 4.5 times as large as our deficit with the OPEC nations; something in the neighborhood of $37.6 billion to $8.3 billion.

I would not be surprised if this year or some year very soon we do not spend more in total for imports of consumer goods and automobiles and parts than we do for oil if current conditions do not change. In my mind, this points up the damage being done to the manufacturing segments of our economy, of which steel still is the base by industrial policies. Last year's deficit in steel was $7.1 billion. Some experts estimate that we import 75 percent as much steel indirectly as directly, which is partially due to tactics like upstream subsidy and downstream dumping.

These tactics are part of an array that pit largely unsupported U.S. companies and industry groups and workers against foreign governments that clear the way for and stand in front of their industries. By and large, this arsenal is founded on ideas that ignore the concepts of equity investment and profit to concentrate on other things, on subsidies and dumping; on low-cost Government finance and Government-directed cartels; on largely closed home markets, and on the concept of targeted exports—and, I repeat, Mr. Chairman, targeted exports—to bring home dollars and to keep the factories running.

If American companies and workers lag in the productivity competition for lack of investment, the Government of these United States has never left the starting line in the competition of policies. So you and your committee, Mr. Chairman, are due recognition and commendation for this effort to amend the trade remedy laws to make them efficient and effective.

We of the Steel Caucus are appreciative of the opportunity to be heard. We want to have a constructive role in this, if we can. I will confine my testimony to your areas of concentration and of those areas targeting is the key, as I understand it.

Targeting stands in regard to the distortion of this market and the savaging of this manufacturing economy and its workers' jobs as intent does to homicide. With intent, homicide is first degree murder, and punishable by full force of the law. Bounty and subsidy and dumping are weapons of targeting in this new school of mercantilism that the Japanese pioneered but which the world is taking up and their use does indicate intent.

I recognize the difficulty in defining targeting. Therefore, I offer for your record a translation of a remarkable interview that appeared last year in a Japanese magazine that is said to be the equivalent of our Atlantic Monthly, and I have it here, Mr. Chairman, and I have but one copy. It has been translated and I ask at this time unanimous consent to make it part of the record, and I think you will find it very interesting reading.

Chairman GIBBONS. Without objection, it will be, and I am sorry I have not had the opportunity to read it. I look forward to it.

[The information referred to follows:]

[Bungei Shunju September 1982 p. 94—105]

IBM IS A TIGER TURNED LOOSE IN A FIELD

(Bombshell Statement by Fujitsu Chairman Taiyu Kobayashi Called Forth by the IBM Industrial Spy Incident by Soichiro Tahara)

KOBAYASHI: I had been telling my employees before this incident even occurred that the 300 or 400 lawyers employed by IBM are rambling around without anything to do. In other words, they are essentially "unemployed." I warned my employees that those lawyers were going to find something to do and that we had better be on the lookout.

Question. What do you mean by saying the lawyers are essentially "unemployed?

Answer. Maybe you were not aware that the U.S. government had brought charges against IBM of violating the anti-trust act and that the company and the government had been engaged in an all-out battle in the courts for many years. In a case like that, 300 or 400 lawyers are mobilized. However, after the switch to the Reagan administration, the government decided to drop the charges against IBM in January of this year. It was undoubtedly a link in Reagan's "Strong America" policy. As a result, the lawyers have been left without anything to do for the present.

Question. So some kind of work had to be thought up for them. And your opinion is that they staged the recent incident for this purpose?

Answer. Don't take me too seriously. I am just joking. However, I do feel that we have to exercise caution. If we always exercise caution, we will not have anything to worry about.

(Kobayashi laughs as if to avoid going into the details of the very complex conditions in the computer industry.)

Question. By the way, how many lawyers do you have at Fujitsu?

Answer. Two or three (laughs) That is all any Japanese enterprise has. You won't find a Japanese company with ten lawyers. They aren't needed. Not in Japan.

Question. Two or three as opposed to 400. I see what you mean. Bankruptcy of the small-size shark mode of operation. It seems that here we might have one of the keys to the solution of the recent industrial spy incident. Even so, the recent incident was both shocking and filled with riddles.

Why did Hitachi, Ltd. and Mitsubishi Electric Corporation have to play parts in a spy drama which seems to have lifted its plot straight out of a cheap action novel? Elite Hitachi employees were engaged in illegal negotiations directly with a decoy FBI investigator to get hold of secret IBM documents, and also secretly entered the premises of an airplane engine maker (Pratt and Whitney Aircraft Group), which uses IBM computers, to take photographs of the target machine.

According to opinions voiced by industry sources, however, there were conditions which forced Hitachi and Mitsubishi Electric to engage in acts which make them look as if they were imitating a spy drama.

Hitachi and Mitsubishi Electric use computer architecture indentical to that of IBM and manufacture computers which can use, without modification, the software developed for IBM computers. These are called compatible machines, and in the industry, this business tactic is known as the "small-size shark method of operation," implying a free ride at someone else's expense.

This means that when IBM announces a new model, these companies must obtain detailed information on the new model as soon as possible in order to manufacture their own new model to compete with the IBM machine. Because technical advances are being made in the computer industry daily, the failure to develop a new model on time could be a fatal blow to a company. But from the IBM point of view, Hitachi and Mitsubishi Electric are rivals, and they are of course not going to generously provide these companies with secret information about their computers. Instead, they are going to try to throw the compatible machine makers who are constantly treading on their heels into disorder by locking up the essential elements of their model behind a thick curtain and making them as difficult as possible to decipher, or by using tricks.

Indeed, the IBM model 3081K which triggered the recent incident is a revolutionary new computer with a memory capacity more than 100 times that of former machines. Not only was the architecture changed entirely from that of past computers, but a portion of the software has been turned into ICs in what is termed a black box. This means that if the compatible machine makers wait until the new model is put on the market before beginning their analysis of the new machine, it will take them a full three years to develop a compatible machine. During this time, the market will be overswept and completely dominated by IBM.

Thus, it is easy to see that Hitachi found itself in the position of having to cross a very dangerous bridge. But at the same time, one begins to feel doubt about another point.

As long as a company continues to follow the route of manufacturing IBM compatible machines, it will have to repeat maneuvers on the order of a dangerous spy drama every time IBM comes out with a new model. This means that eventually the company will face another catastrophe like the recent incident, or at least will have to face that ever-present danger. Why have representative Japanese electronic makers such as Hitachi and Mitsubishi Electric continued to walk such a dangerous path?

There is another big question, too. It is, in fact, not only Hitachi and Mitsubishi Electric among the Japanese makers who have chosen the route of "compatible" machines.

Fujitsu (capitalization: 45.2 billion; employees: 36,000), Japan's largest company specializing in computer manufacturing, has chosen the route of manufacturing IBM-compatible computers. On June 18, four days before the occurrence of the Hitachi-Mitsubishi incident, Fujitisu took up two full gapes of the Nihon Keizai Shimbun to run a huge full-spread advertisement on pages 10 and 11.

It was a declaration of victory—and elated announcement that they had been the first to complete a compatible machine in response to the IBM 3081K.

What this means is that, in some way or another, Fugitsu was successful in obtaining about the IBM 3081K more rapidly than were Hitachi and Mitsubishi Electric. How did Fujitsu get away with it undetected?

In 1979, an incident occurred in which IBM, until then always in the top position in the Japanese market, fell to the position of number two. The number one position was taken over by Fujitsu. (Fujitsu sales were 382.1 billion yen and IBM Japan's sales were 338.3 billion yen.) Sales in 1981 were 671.1 billion yen for Fujitsu and 428.9 billion yen for IBM Japan.

For IBM, the "sun" of the computer industry, this was undoubtedly a very humililating experience.

The first rival which needs to be beaten back by IBM, its deadly enemy, is Fujitsu. In fact, on the same day that Fujitsu made its declaration of victory in a two-page advertisement in the Nihon Keizai Shimbun, IBM also bought space for a two-page advertisement in the same newspaper on page 18 and 19. When you compare these two advertisements, it is clearly apparent just how strong the sense of rivalry which has surfaced between Fujitsu and IBM really is. Why was it that this most bitter rival, Fujitsu, was not caught while Hitachi and Mitsubishi Electric, much less serious rivals to IBM were?

A WARLIKE GLEAM IN THE EYE

And there is yet another question remaining. The route of manufacturing IBM-compatible machines is not something embarked upon yesterday, and each time that IBM has developed a new computer model in the past, Fujitsu, Hitachi, and

Mitsubishi must have obtained secret information from IBM using methods not too much different from those revealed in the recent incident.

It would be hard to believe that Hitachi and Mitsubishi Electric had undertaken an especially blundering method of doing things just for this occasion. And yet, none of the three had ever been caught in the past. The two companies were only caught this time as a result of an intense undercover investigatin in which the FBI was involved. Why did IBM choose this to come out against its rivals? What is the reason that moved IBM to adopt such rough tactics for the first time?

We interviewed chairman Taiyu Kobayashi of Fujitsu, Ltd. and solicited his opinion on some of these questions. Chairman Kobayashi is a man of great practical ability known for his accomplishment of restoring Fujitsu to a position of vitality. Actually, Kobayashi was the first man to map out the course of manufacturing IBM-compatible machines in Japan, and since that time, Fujitsu has been engaged in a bloody all-out battle with IBM.

Kobayashi is a man of slight build, but his face betrays a fierce, dauntless spirit. Behind his spectacles, an extremely warlike gleam from his eyes pierces mercilessly through whoever is talking to him.

Question. There are many things I would like to ask you, but first of all, when did you first learn of the recent IBM incident?

Answer. Well . . . I learned about it quite rapidly, actually.

Question. What was the source of your information about the incident?

Answer. The news came in from America, through our in-company information route.

Question. What were your feelings on learning of the incident?

Answer. This is really terrible. That is all I could think. This is really terrible.

Question. Could you be a little bit more specific about what you mean by, "This is really terrible."

Answer. What I meant was that this was not just a problem for Hitachi and Mitsubishi Electric but that it was a problem for the entire Japanese computer industry. You've got to realize that we started out with nothing, at the very bottom, from point zero, and challenged the giant IBM, which to us was Gulliver. And it has taken all we had to get to our present positions. It was a real effort. Now this incident-had dealt a severe blow to our image. Japanese enterprises are crafty and they play dirty. This is the kind of image that the incident would probably give to people. Of course, that was undoubtedly the aim of IBM in the first place. That is a serious thing.

Question. Even so, Mr. Kobayashi, as you often say yourself, IBM's real adversary is Fujitsu. Why was it that Fujitsu wasn't targeted? What methods does Fujitsu actually use?

Answer. It all depends on the way you do things. We are a small company, and for this reason when we enter overseas markets, we exercise caution piled on caution to avoid causing friction of any kind. The method we have selected is to join hands with an enterprise in our partner nation and with the government of that nation, and to penetrate the market with extreme slowness, taking our time.

Question. In that regard, I wold like to ask your opinion of the strategy of manufacturing IBM-compatible machines which has been in the spotlight in the recent incident. When a company chooses to follow in the footsteps of IBM, then IBM of course is always in the position of taking the lead. The company that follows can be maneuvered around in any way IBM pleases. It is simple to predict that an incident such as the recent one might occur at any time. Why is it that the Japanese computer makers, including Fujitsu, have continued to follow this extremely dangerous route? Is it because Japan does not yet have sufficient technological ability to stand on its own two feet, and that it has no choice but to follow in the footsteps of IBM, no matter how dangerous that strategy might be?

Answer. You have missed the point completely. It is precisely because the misunderstanding you have just voiced is so widespread that we are upset about the incident.

Question. Could you be more specific?

Answer. We began by developing our own computers which we felt did the job, and then worked with all our might to sell them. We found ourselves up against a brick wall. Our predecessor, the "Gulliver" enterprise, IBM, was already in the market where we where trying to sell, doing its very best. The question that faced us was the extent to which we would be able to make inroads into IBM's share. And of course, the users of IBM computers are also using IBM software. Many universities are even using IBM manuals as the textbooks for their courses. This trend is particularly strong overseas, and our reaction was that we would have to do something to respond to this situation.

Question. I see. The software being used by computer users was IBM software.

Answer. All of our prospective customers had software and programs that had been developed using IBM equipment. And a company's software is one of its major assets. You might be interested to know that, at present, computer hardware accounts for less than 30 percent of total computer-related costs. Seventy percent of the cost of setting up a computer system is for software. At the time, of course, it was still less than this.

Question. In other words, IBM has actually become something like an international standard.

Answer. That's right. IBM products are the standard. That means that if we were to sell our own independently developed noncompatable computers, our customers would have to change all their software. It would make the software of our customers—one of their important assets—nothing more than wastepaper. Under this kind of situation, there is no chance in the world that we would be able to sell our computers. Accordingly, we developed a plan that would allow our customers to continue to use the software assets which they had put so much money into developing. That is, we adopted and strategy of IBM—compatibility.

Question. I see. Then the "compatible machine" route was chosen not because Japanese enterprises are technologically inferior, but rather as a sales tactic to break into markets monopolized by IBM.

Answer. That is correct.

FEAR OF DECOY TACTICS

Kobayashi nods vigorously with a look of satisfaction. But, in actuality, after the recent incident, one computer engineer at Hitachi said to me that, "The most frightening thing about compatibility is that the other party might use a 'Decoy Strategy'." Under this strategy, IBM spends a great deal of time to develop a new model, and a significant amount of information gets into circulation about it. At that point, the compatible machine makers diligently collect all the available information, and somehow succeed in manufacturing a machine that can compete with the IBM model. This is just what IBM has been waiting for, and as soon as the compatible machine makers put out their competing models, IBM suddenly replaces the most important element in its new model. Of course, the performance is improved markedly. In other words, the first computer which had been announced as a new model turns out to be a decoy. Actually, this is a method used frequently by IBM. For this reason, the compatible machine makers are desperate to learn which portion of the decoy will be altered when the real model comes out and what changes will be made to complete the new system. It is to obtain information of this type that the compatible makers sometimes end up going too far, as was the case in the recent incident.

Question. As a result, doesn't this mean that there is a high level of danger involved:

Answer. No, in our case, there is no danger involved at all.

Question. What do you mean? Fujitsu is an IBM-compatible maker just like Hitachi and Mitsubishi Electric, isn't it?

Answer. I already told you, didn't I? Fujitsu has adopted a way of doing things in which it takes great care to avoid friction. If you want me to come right out and say it, our method is the Amdahl Company. Highly reliable information is funneled to us through Amdahl. Thus, there is no worry of being entrapped by a traitorous consultant. And I have no idea of what is going on between Amdahl and IBM. That is not my business. Whatever might be going on, that is Amdahl's problem, and it has nothing to do with Fujitsu. It is not even necessary for us to know about it.

Question. Now that you mention it, I do seem to have of heard of the Amdahl Co. Information gathering, particularly the illegal information war, seems to be the achilles heel not only of Hitachi, Ltd., but of Japanese enterprises as a whole. But in the case of Fujitsu, you use a partner named the Amdahl Co. For example, in an article in Nikkei Computer (July 26), a former Fujitsu employee was quoted as saying that "copies of almost all IBM secret documents were floating around at Fujitsu." That must have been what made it possible for Fujitsu to take out a two-page advertisement in the Nihon Keizai Shimbun only four days before the IBM spy incident broke out, declaring its victory in completing a computer compatible with the IBM 3081K. If that is the case, then Amdahl Co. must indeed be the key which enables Fujitsu to obtain all the needed secret information about IBM. What exactly is this Amdahl Co. which Fujitsu is using as its secret weapon? What is the relationship between Fujitsu and Amdahl? Could you be as concrete as possible?

Answer. You see, as made clearly apparent in the recent incident, it is just not a good idea to obtain secret information on IBM directly from IBM. You are just asking to be done in. But, in the United States, individuals have the freedom to move abut wherever they wish.

Question. What do you mean by that?

Answer. If a person moves to another company, the secret information that he carries in his head goes with him, and there is nothing anyone can do about it.

Question. In other words, all you have to do is lure away computer engineers from IBM. Then this what Amdahl Co. does?

Answer. Of course, IBM has its own strategy for guarding against this kind of activity. The responsibilities of computer architects are divided up as finely as the squares in a honeycomb, so that any one engineer knows only the contents of his own hole in the honeycomb, Even so, however, someone has to be responsible for overseeing the whole. That was Gene Amdahl. He was a computer engineer at IBM who had progressed to the very top rank that can be reached by an IBM engineer, that of an IBM fellow. He was the chief engineer in the design of the IBM 360, a project in which IBM invested more money than the sum of what the Manhattan project cost. As a result, all the details of the IBM computers had been pounded firmly into his head.

Question. So what happened with Amdahl?

Answer. Hanzo Omi, at that time a senior managing director at Fujitsu and presently a consultant to the company, learned that Amdahl was going to resign from IBM and go independent. Omi has a friend who is extremely close to Amdahl.

That was a time when Fujitsu was groping around, desperately trying to figure out how to put its hands on, or how to buy, IBM's architectural concepts. At that point, Gene Amdahl breaks away from IBM, and says he can make a machine one step ahead of IBM, exactly copying IBM software, with a higher cost-performance ratio. There was no way we could refuse. As a result of this, compatible circuitry could be developed.

Question. You mean that Fujitsu went into making IBM-compatible circuitry after getting together with Amdahl? Until then, Fujitsu was not making IBM-compatible equipment?

Answer. We were thinking in terms of compatibility some time before that. But even if we wanted to go compatible, the problem was how to do it. Without accurate and detailed IBM information, it can't be done. That's where you have to cross the dangerous bridge.

Question. Which means that if Amdahl hadn't appeared, Fujitsu would not have gone IBM-compatible?

Answer. That's right. It would have been too dangerous any other way. But there was nothing criminal involved as long as all the information was coming out of his own head.

Question. From what you've been saying, it begins to sound less like Fujitsu just happening to find out that Amdahl was leaving IBM and setting up in business himself, and more like Fujitsu having lured Amdahl away from IBM.

Answer. No, no, not at all. We didn't lure him—he came running. [Laughs.]

PREPARATIONS FOR BATTLE—THE MAN BEHIND THE SCENES

Whether he was recruited or came running, the idea of developing IBM-compatible equipment by depending on a former IBM employee was a dangerous gamble, and indeed there were those at Fujitsu who opposed the idea strongly. Why did Fujitsu hire Amdahl and set out on the dangerous route of full-scale IBM compatibility? According to Kobayashi, Amdahl went independent in May of 1970. The following year, Fujitsu set up a research office in a corner of Amdahl's office. And in September, Fujitsu bought 23 percent of the Amdahl Company (32,000 shares, 1600 million yen). 1970-72. For the Japanese computer industry, this was a critical period, an important turning point. It was the time to do or die. In fact, the crisis of these years was not confined to Japanese computer makers. In September of 1970, the giant General Electric Company retreated from the computer industry battlefield, and in September of the following year, RCA threw in the towel as well.

It is said that these were the shock waves occasioned by IBM's bombshell 370 Model computer, introduced in July of 1970. And in Japan, MITI (The Ministry of International Trade and Industry) took the initiative and started getting Japanese computer makers to work together, linking Fujitsu with Hitachi, NEC with Toshiba, Mitsubishi with Oki, etc., forming groups to which it disbursed funds for cooperative development of new machines to respond to the IBM challenge. MITI had in effect declared a state of emergency and taken appropriate measures. It was just at this time of crisis that Fujitsu joined forces with Amdahl and set out to go IBM-compatible.

Question. In restrospect it looks as if the shock of IBM's 370 on the industry was devastating.

Answer. Yes, well, there were a lot of reasons for getting upset, a lot of people raised a fuss . . . . [Laughs.]

Question. Well—didn't it cause GE and RCA to give up the fight?

Answer. Actually, that was more a result of the damage done by IBM's 360 Model. With the 360, IBM had established the architecture for the first really effective computer, and all the other makers were frantically trying to catch up. Then, just as it seemed that they were closing the distance on IBM, boom out comes the Model 370, this time based on LSIs. At that point, RCA and GE just gave up.

Question. Then why were Japanese makers able to stay in the fight?

Answer. Because MITI started providing research grants and made different companies get together for cooperative development of new machines; for the first time, Japanese makers got into a state of battle preparedness. That and, in the case of our company, the fact that Amdahl was there. (According to Kobayashi, the man behind the MITI strategy of battle readiness was Tomisaburo Hashimoto—then minister of transport. Hashimoto was pressing for the idea of conglomerating all the Japanese computer makers into one big company to compete with IBM. It took some effort to persuade him that that would be going too far, but it was finally decided to set up three inter-company groups for cooperative research.)

Question. Incidentally, they say that it was Fujitsu, linked up by MITI with Hitachi, that persuaded Hitachi to pursue a strategy of IBM compatibility. Is this true?

Answer. It's true. It was just when we were linked up for collective research with Hitachi that things began to happen with Amdahl. It was nothing official, but we said, well Hitachi, how about getting in on it?

Question. Does that mean you not only encouraged Hitachi to go IBM-compatible, but invited them to get in on the action with Amdahl?

Answer. Well, there was nothing official about it, just a talk over drinks. And Hitachi said, no no, we'll do things our way.

Question. Hitachi didn't go along?

Answer. That's right, they didn't go along?

Question. So that was the parting of ways? But why didn't Hitachi go along with the Amdahl thing?

Answer. Well, it's hard to say, but I suppose Hitachi being Hitachi there was a matter of pride involved.

Question. But Mr. Kobayashi, you've already said that, without Amdahl, Fujitsu wouldn't have gone over to IBM-compatibility. And yet Hitachi set out on the same route without Amdahl's help. Wasn't that a dangerous decision? Even foolhardy?

Answer. Well, no, not necessarily . . . In fact, even in our company, there was a lot of opposition to the idea of getting together with Amdahl. There was a big uproar that dragged on and on.

Question. What were the reasons for opposition?

Answer. Well, for Fujitsu, it would mean an investment of several hundred million yen. And Amdahl was talking of achieving compatibility by using IBM software just as it is. If he did that, IBM wasn't going to just look the other way. If the IBM giant decided to retaliate, there would be trouble.

Question. Of course. So that's why Hitachi shied off. We understand that you, as managing director at the time, were one of the strongest supporters of the idea of going in with Amdahl. How did you decide it would work out?

Answer. You can't get anywhere without taking a little risk. You get to a point where you've got to just go ahead and do it. And in fact, at the time, as I mentioned before, IBM was running into trouble with the anti-trust laws, and was hamstrung. Indeed, IBM was in no position to retaliate.

Making a "dead-ringer copy"?

Indeed, at the time, IBM was being sued by the U.S. government under the anti-trust act, and was in the midst of a fierce, drawn-out court battle. So even with fairly good grounds, if the giant IBM had tried to bring its fist down on a "shoestring" company, they'd have found themselves served with a warrant for anti-trust violations in no time. So Fujitsu joined forces with Amdahl and set out to achieve full IBM compatibility, and in 1974 announced the "M Series" of machines designed to rival IBM's Model 370.

Question. With the "M Series," Fujitsu suddenly became known around the world. What was the secret of "M Series" success?

Answer. Cost-performance, due to compatibility. With computers, a step forward in technology means a lower price. According to Grosch's Law, cost is no more than twice the square root of performance. At that time, the standard procedure was to use LSIs partially, but we used LSIs throughout. This was because Amdahl designed the equipment to use nothing but LSIs.

Question. In other words, your success resulted from joining forces with Amdahl—that was the decisive factor?

Answer. That's right. We were able to double performance with no more than a 10–20 percent increase in price. But in order to get anywhere with the compatibility strategy, you've got to stay a step or two ahead of the game. We had to know exactly what IBM had up its sleeve.

While listening to Kobayashi's comments on this point, I recalled the role played by Hitachi's consultant, Maxwell O. Paley, in the IBM case. Hitachi asked Paley to collect information on IBM and thus fell into the trap laid by the FBI. Paley was in fact a former IBM employee, and is said to have been one of the higher-ups, working at IBM on a higher level than Gene Amdahl, who later cooperated with Fujitsu. Hitachi was betrayed by a former IBM employee, while Fujitsu, working with a former member of that employee's technical staff, achieved success.

Question. Exactly what was the difference?

Answer. I don't know anything about the affairs of other companies. All I can say is that even though we work together with Amdahl, we only trust him so far. Do something like making "dead-ringer copies". . . . If you start doing that, you're asking for trouble. . . . I don't know just what the Amdahl Co. is doing over there in the U.S. but If anyone tried cracking down, for example, and conducted an investigation, the name of Fujitsu wouldn't crop up anywhere.

Kobayashi was firm on this point. And yet, at one point, Fujitsu's secret weapon, Amdahl Co., was given a severe jolt by IBM and nearly went bankrupt. Hirotsugu Shimoda, who is well-informed on the inner workings of the computer industry, explains that Amdahl got caught not by a decoy investigation but by IBM decoy computer designs, and work on the development of new equipment was severely set back as a result.

Question. At that time, Fujitsu went in with full strength and bailed Amdahl out, and at the same time succeeded in establishing a new bridgehead in America. . . .

Answer. Yeah. That was when IBM tried to get around the competition's 370 compatible equipment by introducing the 3033. They thought they would finish off the 370-compatibles by a sharp price cut on the new machine—i.e., the 3303. They dropped the price by about 20%. What shocked the industry even more was simultaneous 30% cut in prices on all existing equipment. But, fortunately, the 3303 wasn't really that much of an advance over the 370. So it didn't hurt us much at all.

Question. The 3303 was nothing fantastic. But what about the new 3081?

Answer. Certainly. IBM set out to come up with a winner this time around. The architecture is new, for the first time since the model 360. That's why it wasn't so easy for us this time.

Question. In other words, IBM has geared up for the big fight. Before getting into that, I'd like to ask about something else.

Outside of the communist countries, the only markets where IBM's share is less than 50 percent are England (43 percent) and Japan (27.6 percent). And in Japan, IBM has been knocked out of first place by Fujitsu. Why hasn't IBM held first place in Japan?

Answer. That's probably the reason for IBM's irritation and anger. . . . It's probably all right to talk about it now, since the statute of limitations has run out, so to speak. There were complicated factors in the background.

Question. Complicated factors?

Answer. Before Japanese makers started making computers, MITI encouraged the importing of computers by letting them in tariff-free, as a way of encouraging business rationalization. Then Japanesse companies like ours started to build computers. Before we even knew whether they'd run or not, MITI was there helping us out by getting after the automakers and steel companies to start using the domestic makes. . . .

Question. A policy of total protectionism. That would be enough to have IBM complaining about "Japan, Inc.".

Answer. There were other things—we were getting help in the form of research funds . . . . Well, there's no more of that today, but . . .

Question. In other words, duly angered by the 'give-em-an-inch-and-they'll-take-a-mile' compatibility strategy of Japanese makers, topped off by the protectionism and coddling of "Japan, Inc.," IBM bides its time and then strikes back with a superweapon, the 3081K. Now comes their decisive chance to crush the Japanese gnat.

Answer. There's one more important factor. In January of this year, the attorney general's office of the Reagan Administration dropped the anti-trust proceedings against IBM.

Question. That's true, isn't it? Which leaves 300 or 400 IBM lawyers effectively unemployed. They'll have to find something to do with themselves.

Answer. Aw gee, that was just a joke. What's more important is that the settlement with the attorney general's office means that IBM is now free of the shackies of the anti-trust act.

Question. Shackles?

Answer. What I mean is that IBM had been held on a leash by the anti-trust act and couldn't move. Now the leash has been cut.

Question. Industry sources say they were expecting a settlement between the Justice Department and IBM around this fall or next spring. Since the settlement was moved way up, industry sources think this is a reflection of the Reagan Administration's policy of making America strong by easing restrictions on big corporations.

Answer. That's why I've been telling everybody over and over they'd better watch out, something's going to happen.

Question. It certainly looks as though the conditions are ripe for IBM to start taking the offensive, doesn't it?

Answer. Another point is that I was scheduled to meet Secretary of Defense Casper Weinberger in February of this year, but it turned out in the end that my schedule didn't permit me to meet him, so I had someone else represent me. My proxy was warned sharply that the reason for the steadily narrowing gap between U.S. and U.S.S.R. technology was the outflow of technological data from Japan. The U.S. places a very high priority on technical security, and appears to be strongly dissatisfied with Japan in that regard.

Question. That's why they are saying "discipline Japan" with this latest incident?

Answer. Yes. And on that point, I might mention that on July 8–9, when we were having the U.S.-Japan financial summit conference in Hakone, the American side was extremely fierce in its stance. The criticism leveled at Japan was truly something—it would not have seemed strange to even have bombs tossed at us, that was how threatening the atmosphere was.

Question. If that's the case, then it would appear that IBM attacks on compatible makers will only grow more heated. Will Fujitsu or Hitachi change their approaches—for example, banding together with other Japanese makers to build Japan-spec products. . .?

Answer. I can't imagine anything like that happening. That would be a big slap in the face to customers who have used IBM-compatible Fujitsu and Hitachi machines up to now. And also. . . .

Question. Please go ahead. . . .

Answer. I mean the Japanese makers themselves. Sure, if we all sit around the same table we smile and get along fine. But underneath the table it's another story altogether. We are all fierce rivals, and there is absolutely no feeling that we would work together on a joint project.

Question. My final question is how the computer industry views the future of United States-Japan relations.

Answer. Frankly speaking, I don't think that the IBM stonghold, the large-size computer sector, is going to record all that big a growth from now on. The sectors which will grow, I believe, are the ones in which Japan is generally strong—personal computers, office computers, super computers, not to mention local networks. So even IBM will be buying products from Japan in the future, as well as entering into technical tie-ups. In other words, the age in which small-planet makers orbit around the IBM sun is coming to a close. And in this sense, it is not compulsory, it is not a "war"—it is simply the beginning of a new age of international business. It is just something which has got to happen.

THE DRAWBACKS OF BOXING ONE-HANDED

Kobayashi emphasized that in order to survive in the new age of international business one must be cool and have a multilayered view of the situation. It is said that the Japanese are able to box with only one hand, while westerners use both. Japanese feel that when they are hitting someone they are in a fight, and when they are shaking hands they are friends. But westerners use footwork in which they shake hands with one hand and hit with the other. Hitachi's losing out to Maxwell Paley, a consultant on contract, is a clear example of the drawbacks of Japanese-type one-handed boxing. And after being hit once, there are cries that America plays dirty, and worthless feelings of animosity are stirred up to no good end. Again, another fault of boxing with one hand. And for this very reason, it will be quite interesting to see how Fujitsu teams up with its secret weapon of the future, Amdahl, and what type of swift footwork the pair will develop.

Mr. JONES. Would the gentleman yield? Is that the interview with Economy magazine? I think it is.

Mr. GAYDOS. It talks about the recent controversy in this country involving IBM.

Mr. JONES. This is about their strategies of targeting and all of that?

Mr. GAYDOS. Yes. That is in there.

Mr. JONES. If it is the one I think it is, it is a very important interview. It has not been widely dispersed, but it is a very damaging interview about the Japanese way of doing things.

Mr. GAYDOS. It opened up the door to an in-house review of how the Japanese took on the computer problem internationally and how they competed, and I am sure the committee will find it most interesting. Thanking you, Mr. Chairman, I am going to move that it become part of the record.

This interview is with Mr. Taiyu Kobayashi, the chairman of Japan's largest computer company. It deals with Japan's push into this branch of high technology which, incidentally is continuing. In this interview, the chairman describes how the Ministry of International Trade and Industry put his industry on its feet by generous doses of government-directed money, by cartelizing the industry, by tightening up the home market to suppress the competition, and by demanding that other major industries follow a buy-Japan policy, whether their machines would run or not.

Policies similar to those in the interview are being followed today in advanced computers, robotics, aircraft, and biotechnology, I understand. They only approximate what was done in the past for automobiles, steel, and ships and other goods too numerous to mention.

Twice in one segment of this remarkable interview the chairman said the Japanese push was assisted greatly by the antitrust laws of the United States as applied to the American competition, meaning IBM. He used the phrase "hamstrung by law," at one point and "leashed" at another point in his interview.

In summary, the competition often operates in ways that would offend our antitrust laws while American companies are held in check abroad and at home by the same laws. Obviously there is no way we can put this Government to work at trust-busting abroad and I do not think it would be a good idea to repeal the antitrust laws here pertaining to our country.

But we can consider finding a way through the trade law to make such conduct a consideration in both countervailing duty and antidumping cases. For example, we might provide that on a complaint that imports are the product of targeting or conduct that would be called into question under our antiturst law, a trade petition would go into a new channel for appropriate investigation and finding, hopefully expeditiously.

If a case is proved, the remedy available could receive sterner handling than current law now provides. Payment of duties could be made mandatory, not subject to bargaining away for reason of foreign policy. In these circumstances, we might even give the victims standing elsewhere to sue for damages, maybe even to sue for the multiple damages our law provides in some other cases.

This might help some of them recapitalize to compete with the targeting powers now being used by other countries. Otherwise, one way to know if you are being targeted is to consider whether you feel like a bullseye. If in a relatively short time you find your markets eroding suddenly and imports of your product rising dramatically, you can suspect that you are being targeted; if you find combinations and variations of these tactics involved in the rise or the hand of the government generally, you can be almost certain that you are a bullseye industry.

The ancient physicist Archimedes is said to have pondered levers and then to have boasted: "Give me a place to stand and I will move the world." Last month, Secretary Olmer testified to you that one of our trade problems is that we have run out of leverage. We have nothing left to leverage with and very little ground on which to stand.

That the international agreements on subsidy and dumping and our law are held in low regard is amply demonstrated by the 498 percent surge in cases passing through the Department of Commerce last year. In this regard, it might be useful to look into the ideas that some of our partners now use.

Licensing is one such idea. If licenses were required to get goods into this market and were to be held on good behavior—that is, no gross subsidies or dumping by anyone—they might constitute a lever that could move quite a load.

One complaint we hear frequently is that the current remedies deliver relief from illegal practices in doses that are too little or too late, or both. Those who administer the law suggest that they need all the time the law provides for processing a case, but still there are steps that could be taken to prevent relief from being too little and too late.

For example, we could move up to an earlier point the time at which duties are collected and held in escrow. This would even out the surges that begin once the world spreads in the world community that a petition is being prepared and the surges which mount after petition is filed. We have experienced all of these things.

Or, we could install a concept of injunction at some early point. Once the possibility of injury is established, the products flowing from the offending practices could be withheld from the market until the thing is settled. We might even make unemployment above a certain level in an industry one of the criteria for determining whether to enjoin.

Also, as many have testified, the burden of proof should shift at some point. I understand that many small companies and industries are prevented from seeking remedy by the cost of filing petitions which can run into the hundreds of thousands of dollars. Why not establish a trust fund from duties collected from earlier violations and make this money available to them on some basis or another? If duties are found to be owing in a case, the Government should collect the cost of processing it, which I understand is running about $1 million a case, from the offenders even if there is a negotiated settlement. Some change and some new leverage is necessary because this economy and its workers are being worked over by targeting and by industrial policies.

Furthermore, Mr. Chairman, whatever is done should not be done grudgingly or in half measures. This is important to draw support for change, and to make the changes reasonable to many who now are thinking in stronger terms, and that might include the Steel Caucus, Mr. Chairman.

There is no reason to have an industry or a company pushed to the edge of extinction, like the Harley-Davidson Motorcycle Co., as a condition for invoking any part of the law. In fact, if the conditions of targeting exist, there is some sense in invoking the law early to keep those that are targeted off the endangered list.

As cutthroat pricing and targeting become more effective, the bullseye industries fall further and further behind and the gap becomes harder to close. As the targeters become more efficient under government capitalization, as the productivity curve rises, the gap then becomes even wider.

Without laws on the part of the United States that recognize and deal with these things, the targeting will continue, I am afraid, and so will the decline across the whole spectrum of the economy, from things as basic as steel and the goods made with it and of it on through things as advanced as the 265K RAM chip and the next generation computer.

You see, what some call the sunset industries of today are nothing more than the bullseye industries of yesterday. They still are targeted. And the sunrise industries of today, on which some pin so much hope, will be nothing more than the sunset industries of tomorrow if targeted. This is what we face if we do nothing.

There is more to trade policy that needs discussion but just the things before you today I think are important. Mr. Chairman, the Steel Caucus this morning heard from representatives of the machine tool industry, the fastener industry and the alloy casting industries, all targeted at some point and all suffering deep import losses.

In summary, their message was this: There is not a lot of time left until we are pushed beyond the point of no return by foreign subsidy and dumping. Where the trade laws work or show promise of working, the administrative will to enforce them seems to be lacking. This too should be addressed.

And, in conclusion, Mr. Chairman, I want to point out that one of our witnesses is in the alloy business. He casts a part that is essential for our military jet aircraft engines. He is a sole domestic supplier. He is marketed out of business by a subsidized South African competitor.

It is a bronze-lead alloy for a bearing that is self lubricating. He will be out of business. A lot of men are going to be thrown out of work. But what we found out is that South Africa provides a double tax credit deduction for all the things pertaining to export expenses.

He gets a double deduction. So it might be one area that we may take a look at, whether that violates GATT or not. I guess, Mr. Chairman, that would be your decision in your experience.

Mr. Chairman, finally we realize that everything cannot be done at one time and the matters before you are so very important and we cannot get on with them soon enough, in the opinion of the Steel Caucus.

[The prepared statement follows:]

STATEMENT OF CONGRESSMAN JOSEPH M. GAYDOS, EXECUTIVE COMMITTEE CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

Mr. Chairman, I understand that in the merchandise trade deficit of the United States last year our deficit with Japan, Canada and the LDC's was 4.5 times as large as our deficit with the OPEC nations—that it was $37.6 billion to $8.3 billion.

I would not be surprised if this year or some year very soon we do not spend more in total for imports of consumers goods and automobiles and parts than we do for oil if current conditions do not change.

In my mind this points up the damage being done to the manufacturing segments of our economy—of which steel still is the base—by industrial policies. Last year's deficit in steel was $7.1 billion.

Some experts estimate that we import 75 percent as much steel indirectly as directly, which is partially due to tactics like upstream subsidy and downstream dumping.

These tactics are part of an array that pit largely unsupported U.S. companies and industry groups and workers against foreign governments that clear the way for and stand in front of their industries.

By and large this arsenal is founded on ideas that ignore the concepts of equity investment and profit to concentrate on other things; on subsidies and dumping; on low-cost government finance and government-directed cartels; on largely closed home markets; and on the concept of targeted exports to bring home dollars and to keep the factories running.

If American companies and workers lag in the productivity competition for lack of investment, the government of the United States has never left the starting line in the competition of policies.

So you and your Committee, Mr. Chairman, are due recognition and commendation for this effort to amend the trade remedy laws to make them efficient and effective. We of the Steel Caucus are appreciative of the opportunity to be heard. We want to have a constructive role in this.

I will confine my testimomy to your areas of concentration, and of these areas, targeting is the key.

Targeting stands in regard to the distortion of this market and the savaging of this manfacturing economy, and its workers' jobs, as intent does to homicide.

With intent, homicide is first degree murder and punishable by full force of the law. Bounty and subsidy and dumping are weapons of targeting in this new school of mercantilism that the Japanese pioneered by which the world is taking up. And their use does indicate intent.

I recognize the difficulty in defining targeting; therefore, I offer for your record a translation of a remarkable interview that appear last year in a Japanese magazine that is said to be the equivalent of our Atlantic Monthly.

The interview is with Mr. Taiyu Kobayashi, the chairman of Japan's largest computer company. It deals with Japan's push into this branch of high technology, which is continuing.

In this interview, the chairman describes how the Ministry of International Trade and Industry put his industry on its feet by generous doses of government-directed money; by cartelizing the industry; by tightening up the home market to suppress the competition; and by demanding that other major industries follow a buy Japan policy, whether their machines would run or not.

Policies similar to those in the interview are being followed today in advanced computers, robotics, aircraft and biotechnology, I understand.

They only approximate what was done in the past for automobiles and steel and ships and other goods.

Twice in one segment of this remarkable interview, the chairman notes that the Japanese push was assisted greatly by the anti-trust laws of the United States as applied to the American competition, IBM. He used the phrase "hamstrung by the law" at one point and "leashed" at another.

In summary, the competition often operates in ways that would offend our anti-trust laws while American companies are held in check abroad and at home by these same laws.

Obviously there is no way we can put this government to work at trust-busting abroad; and I don't think it would be a good idea to repeal the anti-trust laws here.

But we can consider finding a way through the trade law to make such conduct a consideration in both countervailing duty anti-dumping cases.

For example, we might provide that on a complaint that imports are the product of targeting or of conduct that would be called into question under our law, a trade petition would go into a new channel for appropriate investigation and finding.

If a case is proved, the remedy available could receive sterner handling than current law provides. Payment of duties could be made mandatory and not subject to bargaining away for reasons of foreign policy.

In these circumstances, we might even give the victims standing elsewhere to sue for damages—maybe even to sue for the multiple damages our law provides in some cases. This might help some of them recapitalize to compete with the targeting powers.

Otherwise, one way to know if you've been targeted is to consider whether you feel like a bullseye.

If, in a relatively short time, you find your markets eroding suddenly and imports of your product rising dramatically, you can suspect that you've been targeted.

If you find combinations and variations of MITI's tactics involved in the rise, or the hand of a government generally, you can be almost certain you are a bullseye industry.

The ancient physicist Archimedes is said to have pondered levers and then to have boasted, give me a place to stand and I will move the world; last month Secretary Olmer testified to you that one or our trade problems is that we have run out of leverage. We have nothing left to leverage with and very little ground on which to stand.

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Without laws on the part of the United States that recognize and deal with these things, the targeting will continue;

And so will the decline across the whole spectrum of the economy from things as basic as steel, and the goods made with it and of it, on through things as advanced as the 265 K ram chip and the next generation computer.

You see, what some call the sunset industries of today are nothing more than the bullseye industries of yesterday. They still are targeted.

And the sunrise industries of today—on which some pin so much hope—will be nothing more than the sunset industries of tomorrow, if targeted.

This is what we face if we do nothing. There is more in trade policy that needs discussion than just the things before you today.

But it cannot all be done at once. And the matters before you are important, and we can not get on with them soon enough.

Chairman GIBBONS. Mr. Gaydos, I want to thank you for your statement. There is much in it that is new and there is much in it that is certainly very worthy of very serious consideration.

Let me just think out loud here for a while. I want to get something done this year, something constructive done. I would like to concentrate our fire on what I think are the most likely targets that need to be corrected. I even flinch when I use that word "targets" because I know the significance of it.

I want to concentrate on what we call the unfair trade practices—targeting, subsidies and dumping—and targeting is a part of the subsidy process, as I see it. And I would hope that we can come to some consensus with the Senate that we can do that much and do it well, and not try to create something that is so large we cannot possibly handle it in this year's time frame because I think it is important to get to these practices and get to them very rapidly, not that there are not other things that we should be doing and perhaps ought to go and will do a little later on.

But I would like to concentrate my fire right now on the unfair trade practices—the unfair trade practices as defined in the spirit and the letter of the General Agreement on Tariff and Trade and the spirit and the letter of the subsidies code that all of us entered into, all of the industrialized nations anyway, entered into. And I would like to confine our attention to that so that we could, first, speed up the process, second, make it less costly and, third, make it more certain of remedy.

And you have made a lot of good suggestions here. I want to tell you, as just one member of this committee, I am certainly going to pay serious attention to it.

I think you ought to know that when this committee was in Japan last week one of the messages that I tried to deliver to the Japanese was that while their targeting may have been appropriate as a post-World War II remedy to save their country and to get back on their feet, it was not an appropriate method of proceeding now and that in my own personal opinion some of the practices that as I understood them amounted to a bounty or a subsidy and that I thought that they ought to stop those types of practices.

Now that is probably going to require the redrafting of some of the subsidy statutes on dumping and countervailing duty cases, and that is what I would like to kind of make the agenda for as quickly as we can handle it in this committee this year.

That is going to require a certain amount of comity with the Senate, and I hope we can get our aims and objectives in the same area and if you would use whatever influence you have over there to help us in that it would be appreciated.

Of course, the Japanese denied that any of their targeting practices were in effect a bounty or a subsidy. I would expect that type of response. But if I understand what they are doing correctly, I believe that they are measurable bounties or subsidies and it is something that we have all agreed not to do and, therefore, we ought to put an end to it. Not only they ought to put an end to it, but if we are doing it we ought to put an end to it.

The action and reaction work both ways, as far as I am concerned. I do not want to do anything that destroys people's faith in the objectivity of our laws, but certainly there is some ground for reasonable criticism in that it takes too long and it is too expensive and it is too uncertain of action. So I appreciate the suggestions that you have made.

We talked with Prime Minister Nakasone and he has got his own political problems, and we talked with all of his major Cabinet members. We talked with some Diet members about this. We talked with American business people there and we talked with Japanese business people there. So I guess from this committee the word has gone forth.

I do not intend—I can bind only myself in those kinds of statements, you understand in your role as a committee chairman, but I hope that we can get something done like that this year. As I say, you have made some novel suggestions and you have made some that I think are extremely good and we ought to pay real serious attention to them.

I have directed the staff even before I left for Japan to begin doing the types of staff work that are necessary to correctly analyze the General Agreement on Tariffs and Trade, the subsidies code and our own laws and see what room we have to move within those, and I hope that by the time we get to the drafting stage we will have a better concept of what is possible.

But we also tried to reason with the Japanese that they should open their currency markets more widely to internationalize the yen so that the yen and the dollar would be better alined. That got a very positive response from the Japanese. They realize that their yen is undervalued and they realize that their yen floats too violently in the market. It inhibits their ability to make proper investments and they know it causes problems in our bilateral trade, in fact, the multilateral trade that all of us carry on.

So I think we have a consensus in one area, that we need to do something, not a consensus that we know what has to be done. But we urge the Japanese to complete the internationalization of their yen, believing that that would take some of the pressure off the dollar and it would make the yen more valuable in the marketplace, hoping that that would also cure a part of the frictions that we have between our two bodies.

Well, you did not come for a lecture that long, but I just wanted to let you know what was happening and I appreciate what the Caucus is doing to keep us posted on issues and I know the unemployment in your area has been horrendous and I feel for those unemployed people.

Mr. Gaydos. Mr. Chairman, in limited response, I was most sincere, and I think I reflect the general feelings on the executive committee, in saying that you have had a very firm and stable hand on the rudder over the years. I do mean that.

Maybe it was fortunate that you did have because I also believe that steeped in the knowledge as you are and working with this for all of these years, that if it were not for you we might have traipsed off on a tangent somewhere.

I want you to know that I think that this committee now even considering some changes constitutes a deterrent second to none in efficacy. I think that our major world trading partners and the underdeveloped countries are going to take cognizance. They will say, now the time has come that if we do not clean our act up we are going to get some really severe reprimands. If this process does that alone, Mr. Chairman, I think it is going to be most significant, and it is going to be effective.

So I want you to know we are appreciative of the way you have handled this matter. We are here to help you if we can. We may differ at times in some small areas, but I think our ends are uniquely similar. We are trying to solve a problem, and I just want to approach it that way.

Anything you ask for from us at the caucus I am sure you will get.

Chairman Gibbons. Thank you, sir.

Mr. Jones.

Mr. Jones. Thank you, Mr. Chairman. I do not have any questions. I, too, want to commend you, Mr. Gaydos and the Steel Caucus. I think there may be—at least I hope there may be—developing a different climate today between the United States and Japan. I am encouraged, for example, with what Ambassador Brock is doing.

He in essence has pleaded and beguiled and everything else to get the Japanese to open up their markets and in key sectors I think he is taking the position that we are through urging. If you do not do it we will take you to GATT. I think that is a way to approach it.

On the other hand, I think the Nakasone government is probably doing more in terms of performance than any Government in the postwar period to strengthen the trade ties between Japan and the United States and to open up the Japanese market to our competitive goods.

So I think in that respect we are moving forward and I think with the efforts of the chairman of this subcommittee and the efforts of the Steel Caucus to keep the pressure on that we will continue to see an improved and fair and equitable trade relationship between our two countries and I commend what you have done.

Mr. Gaydos. If I may respond to my good friend, I would hope that maybe as a result of this sound approach that there is a possibility we may be able to save some of those industries just hanging on by a thread. Maybe we can devise some kind of a device that they can apply to or for and to prop them up until this long-range thing works out, until we have some noticeable effects from a change of attitude in this country and internationally.

There are some very critical industries that are really on the verge of extinction, and I think the proof of what I am talking about is the fact that Harley-Davidson has been the recipient of some relief from the administration that I personally felt should have been made available years ago because all of the indicia were there, the facts were there—the losses, everything was so clear.

And I think it is a little bit too little to late. I hope I am wrong, but that is the only one concern that I have, that until we do work this out that we may lose some very, very essential industries and activities in this country.

Mr. **Jones**. Well, as the gentleman knows, in the budget we passed in the House a couple of weeks ago one of the cornerstones was that the basic industries are as much a part of our national defense as direct expenditures on military weapons. We cannot get that equipment to the front if we do not have the basic industrial structure to produce the steel, et cetera. We are not going to have a strong national defense no matter how many weapons systems we buy.

One of the things we are working on now, that I hope you will help with, is a tax approach that will allow some of the basic industries—which have shown they are willing to invest in equipment in the past but have not been able to use all of those credits—to buy some of those credits with available cash or on a discounted basis and to reinvest in improving the productivity.

It is something that we need to do.

Mr. **Schulze**. Thank you, Mr. Chairman. I would also like to thank Mr. Gaydos for his usual excellent job and he gives us a great deal of food for thought in your statement, Joe. Thank you for that.

A moment ago you stated that the Harley-Davidson thing should have been taken care of some time ago. I am inclined to agree with you and I am inclined to change injury to threat, and especially where targeting is involved. I just wanted to have your thoughts on those moves.

Mr. **Gaydos**. I think that would be an excellent path to travel. I think everybody fundamentally and basically accepts the fact that targeting is unfair. I think that it is something that we never envisioned would occur when we got together—and Mr. Gibbons was part of it; he handled it on the floor of the House, or 1979 Trade Act at that time. I forget who the full chairman was at that time but I know Mr. Gibbons is the one that carried the ball.

So we probably didn't envision that type of action, targeting per se. But I think a reasonable approach to that troublesome point in the law would move us a giant step ahead. It would be a fantastic recognition of the problem and I think have great, great influence and repercussions throughout the world, in the trade war that is being waged on us.

Mr. **Schulze**. If the Steel Caucus has any suggestions on defining targeting, I would appreciate that.

Mr. **Gaydos**. We do have them. We will make that available and then of course the committee can use its wisdom and analyze it and would have additional information to consider with the loads of information that they have in this matter.

Mr. **Schulze.** It seems to me if we wait until there is injury, as we have, the record shows that it is like locking the barn door after the horse has been stolen. Often it is difficult, if not impossible, for the individual companies or industries to come back to the position they once held.

So I think targeting and threat are two very important items which we should give a great deal of thought and action to.

Now Joe, you peripherally alluded to antitrust action. It seems to me that most other, and especially in the steel area, most other countries of the world, their steel plants are either nationalized or are under a great deal of influence of governmental pressure. And as a consequence, we don't really have a free market in steel.

I wonder what your thoughts are or the thoughts of the Steel Caucus on an effort to somehow change the antitrust laws a little bit so that we could have better plant utilization. If you have a steel plant that is running at 30 percent and one 8 miles away that is running at 40 percent—this may be a little way out, but there ought to be some way we can have more efficient utilization of existing facilities. And I wonder if the caucus has given any thought to that.

Mr. **Gaydos.** We have had information before the caucus along those lines and maybe this is a good time to make the point, if I may, that the primary purpose of the Steel Caucus has been to disseminate the information among our colleagues, not to usurp any power or any knowhow or any historical committee jurisdiction. It was never our desire. Our desire was always to be a supplement, to help.

And on that point, we have loads of information and we will make it available on some suggestions. This comes from the AISI and probably the committee counsel has that information. Some is new and novel. But I do want to make that point if I could for my colleague from Pennsylvania.

The purpose of the Steel Caucus was always to be an adjunct, to assist and to support. And we tried to educate our members so that it would be easier for the legislation handled, and this is very, very complicated legislation, as has been pronounced so time and time again in the official record. Unless you spend years studying it, you don't know where you're at.

So that is the primary purpose and we would make that available to my colleague at his request. I will make it available to the panel to use it if you need it.

Mr. **Schulze.** I would appreciate that very much. I think not only steel but our other basic industries, as you are well aware, are going through a very difficult period. As Representative Jones stated, we do have to do something in this area. We appreciate your input and hope that through the actions of this committee we can bring about a more stable and more equitable trade policy, not only in this country but to influence that of others around the world.

Thank you, Mr. Chairman.

Chairman **Gibbons.** Thank you. Mr. Conable?

Mr. **Conable.** No questions, Mr. Chairman. Thank you for your testimony, Mr. Gaydos.

Mr. **Frenzel**. Mr. Chairman, I am perusing Mr. Gaydos' testimony. I am going to have to say with embarrassment that I will have to talk with him about it later. I am sorry I am late. The gentleman from Pennsylvania is always one of our best witnesses. I am delighted that he was in here today and I will have a chance to review this and discuss it with him personally at another time. Thank you.

Mr. **Russo**. Mr. Chairman, I don't have any questions for Mr. Gaydos. He is a member of the steering committee of the Steel Caucus and I have been working closely with him. As I indicated at a meeting we had this morning, merely improving the trade remedy laws may not be sufficient to deal with the problems confronting our basic industries. We may have to develop some type of alternative industrial policy to help those basic industries that require assistance. I've indicated to the Chairman that I will do whatever I can, working with the chairman of our subcommittee, Mr. Gibbons, to see that we all get a fair shake, and I am sure that that will happen.

Mr. **Gaydos**. I wonder if I could, Mr. Chairman, at this time, as a matter of record, recognize Mr. Russo's contribution to the meeting this morning and generally since we organized. I do want to add this, we had an excellent turn-out this morning. We had around 15 members there, and again I allude to the indisputable fact that we are operating as an adjunct and a supporter. We are not here to go astray into some other area, to be anti in any way. I think that it is going to be beneficial because when we get legislation, I am sure you will find the majority of the Steel Caucus members and the executive committee supporting and rallying around this Committee.

And Mr. Chairman, if I may at this time, Mr. Murtha, who is now serving as the chairman, has a prepared statement and I would ask unanimous consent that it be made part of the record as his presentation on behalf of the Steel Caucus.

Chairman **Gibbons**. Fine, we would be glad to do that.

[The statement of Mr. Murtha and additional material follow:]

STATEMENT OF HON. JOHN P. MURTHA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

TRADE AND THE PRESERVATION OF SMOKESTACK AMERICA

Mr. Chairman, I share my colleagues concern about the condition of our trade laws and would concur with the view expressed during earlier hearings that a major defect in the laws is related more to the will to enforce the laws over the past twenty years rather than in the actual substance of the laws. However, there is evidence of the need for fine tuning of the trade laws in the aftermath of the trade cases processed during 1982.

Most of us have become abundantly aware of the various unfair trade practices used by some of our trading partners as a result of the 132 trade cases filed by the steel industry last year. We learned of government subsidization in the range of 20-40%, dumping margins ranging from 20-30%, coordinated industry targeting, and abuses of exchange rates to mention a few.

Of particular interest is the technique of industry targeting where coordinated government policy via an assortment of favorable treatments assists the growth of a specific home industry through market regulation, bank loan guidance, tariffs and tax benefits. Among other things, such entities enjoy preferential status with regard to credit financing, buyer preferences, exemptions from antitrust laws and protection from foreign competition in the home market.

Beyond this, some foreign governments sanction the development of export cartels where exporters may enter into agreements on price, quantity, quality, design or any other matter in the export trading area. It is obvious that the existence of such arrangements in the United States would raise the eyebrows of many a Justice Department official. To an extent, we have taken initial steps to address this problem, but it may be too late.

In the last Congress you will remember that an Export Trading Company Act was passed with the objective of promoting the viability of American manufacturers through enhanced export policy and as we all hear repeatedly these days, exports contribute to 8% of GNP today compared to 4% 10 years ago. As laudable as the objectives of expanding the concept of export trading companies, the wider participation of the banking community in the process and the loosening of antitrust laws to promote exports may be, the fact remains that many basic industrial sectors of our economy are engaging in a battle for survival in the domestic market against unfairly subsidized competition with little time to concentrate on exporting.

I am not here to criticize the importance of the concept embodied in this legislation but it is difficult to reconcile when you consider the condition of "smokestack" America whose survival is mandatory to the health of this nation, a nation which used to be a net exporter of goods. A few weeks ago I felt that maybe we in the Steel Caucus were alone in our belief of the need for coordinated action and policy to preserve industrial America.

My mind has been changed somewhat for a number of reasons. For example, recently I was amazed to read in an article in the American Metal Market which echoed sentiments similar to the Steel Caucus regarding trade and industrial policy. It was encouraging to learn that Mr. Eliot Janeway, a well-known political economist, has a similar understanding and vision of the problems facing this country.

I would like to share with my colleagues some excerpts from this article. According to the article in which Mr. Janeway was interviewed:

- the administration is unwilling to develop a "national industrial policy" to maintain the economic viability of basic industries in the United States;
- once the worldwide economic recovery gathers steam, the foreigners will drink our blood with their industrial surpluses;
- allowing shares of the U.S. market for imported cars, steel, copper, brass and aluminum in the name of free trade is unconscionable;
- the loss of these markets is occurring because there is a belief by the administration that the U.S. should switch from an economy based on manufactured goods to an economy based on delivery services;
- finally, the Congress will have to take the lead in supporting the restructuring and revitalization of basic industries.

While I would not subscribe completely to Mr. Janeway's assertions, I would submit that he has made a point which I consider an "absolute". We cannot afford to allow the American economy to shift to a service based economy. It is politically, economically and socially unwise. As Mr. Janeway put it "People like to make things, to be productive. Computers only work for you, they don't think for you...True, there is less need in some markets for the volume of metal once consumed in the U.S. But it is also true that there are other areas, like rebuilding of America's highway and bridge infrastructures, where more metal is going to be needed in coming years".

Mr. Janeway continued, the "U.S. can get by with less overall capacity for certain metals, that's the shakeout underway during the current recession. But the U.S. needs to have sufficient, efficient capacity to meet the needs of the bulk of home-market demand, and a cushion to meet any buildup caused by defense".

It appears to be Mr. Janeway's contention that we would do well to emulate our trading partners in their trade and industrial policies. "In every other industrialized nation, government is the offensive line, the shield, the buffer acting to support basic industry, not the heavy hand of socialism, but industry's stock broker." Further, he warns that if there is a strong recovery in the U.S. economy without the effort to restructure and revitalize domestic industries, "the foreigners will rip off chunks of the U.S. market with low import prices like you've never seen to get their people working and their plants running at full capacity."

In conclusion, Mr. Janeway observed that more legislators acknowledge the difficulty that U.S. businesses have in competing today in a world of state capitalism where offshore producers are owned by their governments. Further, there is a need for trade law reform to resolve "philosophical inequities" between the U.S. and its trading partners, and that the "free trade credo is supposed to be fair trade, protection for the consumer, not protection for the importing industries."

Most of what Mr. Janeway said was reaffirmed recently in testimony before the Congressional Steel Caucus by a diverse panel of domestic industries -- from mushrooms to aerospace. At this time, I would like to present copies of the testimony delivered before the Steel Caucus which the Subcommittee might find useful during its deliberations on these critical issues. This testimony convinced me that we are indeed not alone in an effort which began in the creation of the Steel Caucus in September, 1977. With the recent efforts by industry and labor to increase productivity and cut back costs, it is time for those in government to establish long-term policies to reverse the liquidation of "smokestack" America.

However, the urgency of my concern has grown with recent projections by economists regarding the growing trade imbalance. While some economists have forecasted a jump from $40 billion trade deficit in 1982 to a trade deficit of nearly $80 billion in

1983, others are forecasting a staggering $100 billion trade deficit this year. I am not sure that we have a trade policy these days, but if we do it should be implemented to reduce this trade imbalance and not accelerate it year after year.

There is a clear need to address this problem and to focus attention on reforming trade laws to account for industry targeting, abuses of exchange rates and export cartels in the course of international trade. We in the Caucus offer our full support to the Subcommittee in their efforts to seek solutions and alternatives to achieve this goal. Thank you.

PRESENTATION OF MR. GENE FRANK TO THE CONGRESSIONAL STEEL CAUCUS :
ON BEHALF OF THE COALITION FOR FREE AND FAIR TRADE
FEBRUARY 23, 1983

Mr. Chairman:

Everyone scheduled to appear before you today, I believe, are in pursuit of a balanced, fair and expansionist trade relationship between the United States and all of its trading partners.

They are also in pursuit of Domestic remedies to unfair trade practices that creates an artificial environment that discriminates against a free market system.

These industries and their companies want to contribute where they can be constructive to the development of a sound U.S. industrial policy and to the development of a new comprehensive trade policy -- utilizing inputs developed from all sectors of the economy including service industries, high technology, basic industries and their perceived impact on the National Economic and Defense structure of the United States.

To create a coalition of coalitions will be a challenge:

It will be a massive task to coordinate such a large undertaking. To bring tegether industries, trade association, communities, trade unions and other interested parties in order to provide an articulate, unified and centralized body that can speak with one voice and have a common purpose -- the future of this country.

The Japanese are doing it for their country. So can the people in this room with the help of others like them across the nation. If we don't accept the challenge, we only have ourselves to blame for the future.

You Gentlemen accepted the challenge to form a Caucus. You did it successfully; you have the largest, most effective Caucus in the history of Congress. It warrants the support of every industry in the USA that has a trade problem.

Speaking for the coalition, a major function of the coalition will be to monitor and analyze trade flows to build an early warning system to catch surges of injurious imports: Analysis to determine the magnitude of the massive technology transfer resulting from trade distortion and its impact on the U.S. economy current and future; Analysis to determine the degree of erosion to the industrial base of the U.S. and the possible impairment to our defense mobilization capability caused by trade distortions; Analysis to determine the cost that non-enforcement of trade laws has on U.S. jobs, communities and human dignity. (Each million jobs = $25 billion in budget deficits)

One industry pleading its case to the U.S. government is considered a special interest group. A coalition of industries representing the overall industrial base of the U.S. cannot be considered a special interest group and may have a chance.

The story of these industries have to be heard and properly attended to. We are in the process of losing over 50 industries in the U.S. while the Government battles to get six aluminum base ball bats, six oranges and a side of beef into Japan to no avail.

Trade problems: every industry has them.

Many service industries in testimony have predicted that if the U.S. does not do something about trade barriers being erected against our service industries, our service sector will wither and fade before the onslaught of foreign competition, just as it has in manufacturing. Service industries represent 70% of our GNP. Manufacturing industries represent 30% of our GNP.

Needs for each industry vary; for example:

Engineeging and Construction needs-- competitive export financing, effective export promotion policies, reduction of international protectionist practices, modification of foreign corrupt practices act, Anti-trust regulations, anti-boycott laws.

Pharmaceutical industry needs-- reduction of international protectionist practices, change in some U.S. policies and practices that discourage technological innovation, the elimination of weakness in the U.S. patent system (other nations weaken their patent laws to take advantage of the U.S.)

It took over 20 years of imports coupled with non-enforcement of trade laws to bring the steel industry of the U.S. to its knees. After a pattern had been established, it only took 3 years of imports along with non-enforcement of trade laws to bring the auto industry to its knees.

The U.S. public has been told that workers in the mature industries such as steel and autos should retrain for jobs in industries that are growing and which the U.S. basing its future on -- such as high technology. Well, it only took 18 months of non-enforcement of trade laws and massive imports of semi-conductors to capture over 70% of that high technology industry and bring it to its knees.

Here are some other high technology industries that the Japanese are targeting for take over as they did semi-conductors: Fifth generation computers; bio-technology; fiber-optics; lasers; nuclear reactors; telecommunications; aerospace; heavy electrical equipment; and on and on. Can this country afford to lose these industries?

In the area of high technology, the learning curves are so steep that just loss of market share will permanently leave us in the wake of our trading partners -- never again to regain competitive production. Remember we have been experiencing a steady decline in our relative competitiveness over the past two decades, and have done nothing about it.

What option do American workers and industries have? What do they retrain for or reinvest their capital in? Has the U.S. given up on its vital auto and steel industries, industries other nations are building up in order to surpass the U.S. as an industry power?

Will the U.S. Government begin to pat attention to the incidious erosion to its overall industrial base beginning with the crippling blows imports are now dealing to industries downstream from steel, 30-40 industries who without help have a dubious future. Will the U.S. Government finally move to understand that there is a real threat facing our high technology industries. We could be shattered in 18 more months. Then whal will we train our workers for- work options will be gone-- all that's left is standing in line to receive their transfer payment checks.

I see as a real threat over the next 12 months the projected or estimated increase in the deficit of our merchandise trade balance. In 1982 it approximated a deficit of $43 billion and is expected to double in 1983 , maybe approach $100 billion.

The public has been told that the economy is beginning to pick up. The expected deficit in our merchandise trade balance will, however, leave pockets of unemployment around the country. Pockets like Western New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Alabama, Mossouri and many other pockets. Empty pockets that cannot help other areas keep a buoyant economy, and irreparable injury to many industries with the attendant plant closings.

When we all studied economics as freshmen in college, our first course was Principals and Problems of Economics. One major principal was free trade. Preotectionism was against everyone's moral principle. We all approved of the law of comparative advantage. If you built a conceptual economic model based on the theory of free trade, it would have to be built without the contraints of the real world in order to work. In the real world today, with its restraints and constraints a free trade model would not be operable, because a conceptual model based on free trade theory is in reality intellectually flawed. It cannot be defended mathematically, logically or morally by the unemployed.

Let's use autos and high tech as examples of some of the flaws:

Hi-Tech/Semi-conductors:

World demand growing @ 25% per year. Every time our industry doubled volume, it reduced its prices 30%. Everyone benefitted. Much money was spent on R&D -- always a new generation of product on the drawing boards. In the past 20+ years the semi-conductors industry has had to re-tool 19 times to keep up with new technology. The industry became capital intensive. It costs as an example, over $100 million per firm for R&D and production facilities to produce the 64K Ram and up to $200 million per firm for the 256K RAM (Random Access Memory) B.T.

The Japanese entered the 64K RAM market in October of 1980. They cut prices from $30 per device to about $6, they deprived out industry of billions in volume and profits went into the red. Took over 70% of market while closing off their market to to U.S. producers. Without products, how can the industries tool up for the next generation.

U.S. Debt to equity @ 25%; U.S. interest charges 17.5% during Period. Japanese debt to equity ratio @ 40%; Japanese interest charges @ 9.6%, possibly 6%.

U.s companies can't afford to re-tool and utilize R&D. Japanese companies, with unlimited funds, can re-tool, and so, own the future of the industry.

AUTOS

We wouldsoon see how U.S. auto companies could compete against the Japanese if just a few distortions were taken out of the free market system:

1) Dirty float; 2) Value added tax rebates; 3) Closed Japanese markets;

1a) The yen should be down to @ 185-190 not the 235 level, or about 25%.

2a) $1,600 to $1,800 of value added tax deducted from the exported car.

3a) A $9,000 car in the U.S. cost @ $27,000 for the same U.S. car in Japan.

We should reciprocate these action in kinds and establish the port of entry for all Japanese autos in Wanamie, Pa. and have all three customs inspectors assigned there to examine them thoroughly for termites.

If we continue to allow our industries to be overrun one at a time we will soon be reduced to an agrarian society. This would not be too serious of a change to go through during Adam Smith's era. But today is not Adam Smith's era its the Atomic Age, it's 1983, and if we weaken we have Russia to contend with. They have us if we continue to lose the economic war we are now engaged in.

With the upturn in the economy of the United States, it is almost certain that what little attention the U.S. Government has given to damaging trade distortions will most certainly subside. It is almost certain that off-shore pressures of high technology will take advantage of the situation and concentrate their efforts in penetrating our market place in the most advanced technological areas as well as other areas important to our defense capabilities.

The Coalition must be in position to monitor trade flows and bring to the attention of the Government and the public the distortions that will have a negative impact on this country's industrial base, technological preeminent role and its national security. This country cannot wait for the next downturn in the economy to sound the alarm.

Mr. Art Davidson on Behalf of the
Metalworking Fair Trade Coalition

Before the Congressional Steel Caucus, February 23, 1983

GOOD MORNING.

I'M SURE THAT THE STEEL CAUCUS HAS HEARD A GREAT NUMBER OF HORROR STORIES ABOUT OVERSEAS COMPETITION DURING THE PAST COUPLE OF YEARS. MY PURPOSE IN COMING HERE TODAY IS TO TELL YOU THAT YOU HAVE SEEN ONLY THE TIP OF THE ICEBERG AND THAT SOME OF THE MEASURES TAKEN HAVE BEEN COUNTER-PRODUCTIVE.

I'M ARTHUR DAVIDSON AND I'M PRESIDENT OF MIDLAND FORGE, A LEADING DOMESTIC PRODUCER OF TOP QUALITY CHAIN ATTACHMENTS, FARM HARDWARE AND OTHER FORGINGS IN CEDAR RAPIDS, IOWA. MY APPEARANCE HERE TODAY, HOWEVER, IS IN MY ROLE AS CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE METALWORKING FAIR TRADE COALITION.

IT SEEMS THAT, WHENEVER TWO OR MORE PEOPLE GET TOGETHER THESE DAYS, THEY FORM A COALITION. A CARTOON IN THE WALL STREET JOURNAL JUST BEFORE CHRISTMAS DEPICTED A LITTLE BOY STANDING IN FRONT OF SANTA CLAUS AND SAYING, "I REPRESENT THE COALITION OF GOOD LITTLE BOYS AND GIRLS."

OUR COALITION HAS MUCH MORE SUBSTANCE TO IT THAN THAT. OUR MEMBERS ARE 26 TRADE ASSOCIATIONS, ALL INVOLVED IN METALWORKING INDUSTRIES. A LIST OF THOSE MEMBERS IS BEING MADE AVAILABLE TO YOU. WE NORMALLY EMPLOY 1,400,000 PEOPLE IN ABOUT 25,000 PLANTS WITH TOTAL SALES VOLUME OF ABOUT $75 BILLION. A LITTLE SIMPLE ARITHMETIC WILL TELL YOU THAT, EVEN WHEN BUSINESS IS GOOD (AND IT CERTAINLY IS ANYTHING BUT GOOD AT THE PRESENT TIME FOR METALWORKERS)--EVEN WHEN BUSINESS IS GOOD, THESE METALWORKING PLANTS EMPLOY AN AVERAGE OF ONLY ABOUT 55 PEOPLE EACH.

THESE ARE THE SMALL BUSINESSES THAT HAVE GIVEN THIS COUNTRY ITS STRENGTH.

WE ALSO HAVE NINE SUPPORTING ORGANIZATIONS--BASICALLY SUPPLIERS TO THE METALWORKING INDUSTRIES. THEIR OPERATIONS ARE NOT INCLUDED IN OUR STATISTICS.

WE HAVE HAD TO BAND TOGETHER BECAUSE MOST OF US ARE MUCH TOO SMALL TO FIGHT THE BATTLE ON OUR OWN. HOW CAN A COMPANY WITH 55 EMPLOYEES TAKE ON THE WHOLE NATION OF JAPAN? WHAT A MISMATCH WE FACE WHEN PRODUCERS OVERSEAS DECIDE TO TARGET ONE OF OUR INDUSTRIES AND ARE BACKED BY THEIR GOVERNMENT'S RESOURCES THROUGH DIRECT OR INDIRECT SUBSIDIZATION TO ALLOW THEM TO UNDERSELL US IN OUR OWN BACKYARD.

OUR COMPLAINT IS NOT AGAINST INTERNATIONAL TRADE PER SE. MANY OF US TRADE INTERNATIONALLY. NOR DO WE PROPOSE BANNING IMPORTS. WE REALIZE THAT, IF WE ARE GOING TO EXPORT, WE MUST ALSO IMPORT.

AS OUR NAME SIGNIFIES, OUR BUGABOO IS UNFAIR COMPETITION FROM OVERSEAS--DUMPING, UNREALISTIC CREDIT TERMS, MANIPULATION OF EXCHANGE RATES AND OTHER PREDATORY PRACTICES, ALL OF WHICH ARE SUPPORTED BY GOVERNMENTS ABROAD THROUGH SUBSIDIZATION IN ONE FORM OR ANOTHER.

FREE TRADE IS GREAT WHEN EVERYONE PLAYS BY THE SAME RULES. IN TODAY'S GAME THE REFEREE ALWAYS SEEMS TO CALL "FOUL--PROTECTIONISM" ON US AND PAYS LITTLE OR NO ATTENTION TO THE DIRTY TACTICS USED BY OUR OPPONENTS.

ONE OF THE STATEMENTS I MADE AT THE BEGINNING OF MY REMARKS TODAY WAS THAT SOME OF THE MEASURES TAKEN IN THE PAST HAVE BEEN COUNTER-PRODUCTIVE.

I WAS REFERRING TO THE PHENOMENON NOW KNOWN AS DOWNSTREAM DUMPING. YOU HAVE PROBABLY HEARD A DEFINITION OF THIS BEFORE, BUT LET ME GIVE YOU MY EXPLANATION OF DOWNSTREAM DUMPING AND WHY IT IS THE RESULT OF SOME ACTIONS TAKEN BY OUR GOVERNMENT IN THE PAST.

WITHIN THE PAST FEW MONTHS OUR STEEL INDUSTRY HAS HAD SUCCESS IN GETTING SOME ACTION TO STEM THE TIDE OF STEEL IMPORTS FROM THE EUROPEAN ECONOMIC COMMUNITY. DO WE REALLY THINK THAT THE BRITISH OR THE ITALIANS OR THE FRENCH ARE GOING TO FOLD THEIR TENTS AND SILENTLY STEAL AWAY? THAT'S NOT LIKELY WITH OUR TRADING PARTNERS.

EXPERIENCE IN THE PAST HAS SHOWN THAT WHEN OVERSEAS STEEL SUPPLIERS FIND THEIR U. S. MARKET HAS BEEN CUT OFF OR REDUCED, THEY SELL THEIR STEEL TO METALWORKERS IN THEIR OWN COUNTRY AT PRICES LOWER THAN THOSE AT WHICH THEY SELL THE SAME STEEL FOR THEIR DOMESTIC CONSUMPTION WITH THE PROVISO THAT THE PRODUCTS MADE THEREFROM MUST BE EXPORTED. THE METALWORKERS IN TURN ARE THEN ABLE TO SELL THOSE PRODUCTS IN OUR MARKETS AT UNREALISTICALLY LOW PRICES--PRICES FREQUENTLY LOWER THAN THE COST OF THE EQUIVALENT STEEL. THAT'S DOWNSTREAM DUMPING--AND ALL OF US, INCLUDING YOUR STEEL INDUSTRY CONSTITUENTS, ARE BEING DUMPED ON.

IF THE DOMESTIC METALWORKERS ARE UNABLE TO SELL THEIR PRODUCTS, THEY CERTAINLY CAN'T BUY THE STEEL WITH WHICH TO MAKE THEM--AND WE'RE RIGHT BACK TO SQUARE ONE EXCEPT THAT NOW THE METALWORKERS' EMPLOYEES ARE STANDING IN THOSE UNEMPLOYMENT LINES RIGHT NEXT TO THE STEELWORKERS.

WHEN THE METALWORKING FAIR TRADE COALITION HELD ITS FIRST FULL-FLEDGED GENERAL MEETING IN CHICAGO LAST DECEMBER 7TH--A DATE THAT WAS SELECTED FOR OBVIOUS REASONS--ONE OF THE CONCLUSIONS REACHED WAS THAT DOWNSTREAM

DUMPING IS THE ISSUE TO WHICH WE MUST DEVOTE OUR MAJOR COALITION EFFORTS DURING 1983.

ANOTHER STEP WE TOOK AT OUR DECEMBER MEETING WAS THE APPOINTMENT OF A LEGISLATIVE ACTION COMMITTEE. IT IS NOT OUR PRESENT INTENT TO PROPOSE NEW LEGISLATION ON OUR OWN. WE ARE, HOWEVER, MONITORING PROPOSALS MADE BY OTHERS; AND WE DO EXPECT TO ENDORSE THOSE PROPOSALS WE FEEL ADDRESS THE PROBLEMS OF UNFAIR IMPORTS PROPERLY. WE SHALL, OF COURSE, BE ESPECIALLY WARY OF ANY PROPOSED LEGISLATION THAT MERELY TRANSFERS THE PROBLEMS FROM ONE SEGMENT OF INDUSTRY TO ANOTHER.

WE ASK YOUR HELP IN THIS REGARD. THE CONGRESSIONAL STEEL CAUCUS WILL UNDOUBTEDLY BE LOOKING AT A GREAT DEAL OF PROPOSED LEGISLATION. PLEASE REMEMBER THAT YOUR CONSTITUENTS WILL BE DOUBLE-BARRELED IF YOU DON'T CLOSE THE DOWNSTREAM DUMPING LOOPHOLE WHEN WORKING ON NEW LEGISLATION.

OUR INDUSTRIES ARE READY AND ANXIOUS TO COMPETE IN A TRULY FREE MARKET. WE HAVE EFFICIENT SHOPS, CONSCIENTIOUS WORKERS AND, IN MANY CASES, TECHNOLOGICAL SUPERIORITY. DON'T SWALLOW THE PROPAGANDA THAT EVERYTHING AMERICAN INDUSTRY DOES IS WRONG AND THAT EVERYTHING THAT COMES FROM OVERSEAS IS SUPERIOR.

FURTHERMORE, OUR METALWORKING INDUSTRIES ARE VITAL TO THE SECURITY OF THE UNITED STATES. IT IS TRULY ALARMING TO SEE THE STEADY EROSION OF OUR INDUSTRIAL BASE. AS WE IMPORT METAL PRODUCTS, WE EXPORT OUR CAPABILITY TO PRODUCE AND OUR EXPERTISE. AND, OF COURSE, WE CONTINUE TO IMPORT UNEMPLOYMENT.

I MENTIONED EARLIER THAT A U. S. MANUFACTURER FINDS HIMSELF TAKING ON

THE ENTIRE NATION OF JAPAN WHEN HE IS INJURED BY UNFAIR OVERSEAS COMPETITION. I HASTEN TO ADD THAT JAPAN IS NOT THE ONLY CULPRIT.

I WAS ATTENDING A FORGING INDUSTRY ASSOCIATION MEETING RECENTLY WHEN I RECEIVED A PHONE CALL AT THE HOTEL. THE VOICE AT THE OTHER END IDENTIFIED HERSELF AS A REPORTER FOR A PUBLICATION I HAD NEVER HEARD OF. SHE HAD TRACKED ME DOWN IN ORDER TO GET SOME INFORMATION ABOUT OUR COALITION'S SUPPORT FOR THE HOUDAILLE PETITION. ONE OF THE QUESTIONS SHE ASKED WAS, "WHY ARE YOU PICKING ON THE JAPANESE?"

I DIDN'T FIND OUT UNTIL LATER IN THE CONVERSATION WHY SHE ASKED WHAT APPEARED TO ME TO BE A STUPID QUESTION. WHEN I ASKED HER IF SHE COULD SEND ME A COPY OF THE PUBLICATION WHEN IT COMES OUT, SHE SAID SHE COULD BUT IT MIGHT BE A BIT DIFFICULT FOR ME SINCE THE ENTIRE PUBLICATION IS PRINTED IN JAPANESE.

INCIDENTALLY, I SUBSEQUENTLY RECEIVED A COPY, AND SHE WAS RIGHT. THE ONLY WAY I WAS ABLE TO IDENTIFY THE PORTION OF THE ARTICLE DEALING WITH ME WAS BY LOOKING FOR THE PENCILED ARROW SHE HAD HELPFULLY PLACED ALONGSIDE THE JAPANESE TEXT.

AT ANY RATE, I GAVE HER THE RIGHT ANSWER EVEN BEFORE I KNEW IT WAS FOR A JAPANESE PUBLICATION. WE MAY TALK ABOUT THE JAPANESE A GREAT DEAL BECAUSE THEY ARE PROBABLY THE WORLD'S FOREMOST AUTHORITIES AND MOST EXPERT PRACTITIONERS IN THE ART OF SUBSIDIZATION AND OTHER UNFAIR TRADE PRACTICES. I TOLD HER, HOWEVER, THAT WE ARE JUST AS CONCERNED ABOUT BRAZIL, THE NETHERLANDS, BELGIUM, ITALY, FRANCE, ENGLAND, AND THE "NEW JAPANS"--SOUTH KOREA, HONG KONG, SINGAPORE AND TAIWAN--AND ALL THE OTHERS ENGAGED IN UNFAIR COMPETITION.

THEREFORE, WE MUST BEWARE OF ONE OTHER PITFALL. WE CANNOT ASSUME THAT AN AGREEMENT WITH ONE COUNTRY OR ONE GROUP OF COUNTRIES WILL SOLVE OUR UNFAIR IMPORTS PROBLEMS FOR ALL TIMES. THERE IS USUALLY SOMEONE ELSE STANDING BY READY TO FILL THE GAP.

FURTHERMORE, WE HAVE THIRD COUNTRY DOWNSTREAM DUMPING. WHEN A STEEL MILL OVERSEAS CAN'T DUMP ITS PRODUCTS DIRECTLY INTO OUR MARKET, IT CAN DUMP THROUGH A METALWORKER IN AN UNDERDEVELOPED NATION WHICH THEN GETS THE ADDED ADVANTAGE OF BEING ABLE TO BRING THE FABRICATED PRODUCT INTO THIS COUNTRY DUTY-FREE.

IT'S ALL VERY FRUSTRATING. MANY PRODUCTS FORMERLY MADE IN THIS COUNTRY ARE AVAILABLE NOW ONLY AS IMPORTS. MORE JOBS ARE BEING LOST ALL THE TIME. METALWORKING PLANTS ARE CLOSING. EVEN OUR ABILITY TO PRODUCE ITEMS FOR OUR NATIONAL DEFENSE IS BEING SYSTEMATICALLY DESTROYED WHEN COMPONENTS MUST BE PURCHASED OVERSEAS.

IN THE MEANTIME, HARD-LINE FREE TRADERS CALL THE REST OF US PROTECTIONISTS. WE DISLIKE THE TERM PROTECTIONISM; AND, AS I SAID EARLIER, WE ARE PREPARED TO COMPETE IN A FREE MARKET IF WE ALL FOLLOW THE SAME RULES. IF PROTECTIONISM IS DEFINED AS WANTING TO PROTECT AMERICAN INDUSTRY AND AMERICAN WORKERS AGAINST THE LOSS OF THEIR MARKETS TO UNFAIR COMPETITION FROM OVERSEAS, HOWEVER, I GUESS WE ARE PROTECTIONISTS.

LET'S NOT ALLOW INDUSTRY AND OUR GOVERNMENT TO CONTINUE IN AN ADVERSARIAL RELATIONSHIP WHILE OUR OVERSEAS COMPETITION INVADES OUR MARKETS AIDED AND ABETTED BY THEIR GOVERNMENTS. WE MUST TAKE THE STEPS NECESSARY TO ASSURE THAT WE DON'T END UP WITH A SERVICE ECONOMY AS HAS BEEN PREDICTED. WITH NO INDUSTRIAL BASE, THE RECESSION WE HAVE BEEN SUFFERING THROUGH

CAN BECOME PERMANENT.

I TRULY APPRECIATE THIS OPPORTUNITY TO SPEAK WITH YOU THIS MORNING. IF WE IN THE METALWORKING FAIR TRADE COALITION CAN BE OF ASSISTANCE TO YOU, I HOPE YOU WILL CALL UPON US.

THANK YOU.

PRESENTATION BY

A. J. SPURIA

TO

THE CONGRESSIONAL STEEL CAUCUS

FEBRUARY 23, 1983

GOOD MORNING. I AM ANTHONY J. SPURIA, CHAIRMAN OF THE BOARD OF FAIRCHILD AIRCRAFT CORPORATION, A SUBSIDIARY OF FAIRCHILD INDUSTRIES INC.

FAIRCHILD INDUSTRIES WOULD LIKE TO THANK THE STEEL CAUCUS FOR THIS OPPORTUNITY TO EXPLAIN THE ADVERSE ECONOMIC EFFECTS OF FOREIGN IMPORTS ON OUR BUSINESS.

FAIRCHILD AIRCRAFT CORPORATION MANUFACTURES AND MARKETS THE METRO SERIES OF AIRCRAFT, A 19 PASSENGER TURBOPROP TRANSPORT AIRCRAFT DESIGNED TO SERVE THE NEEDS OF THE GROWING U.S. AND WORLDWIDE COMMUTER INDUSTRY. OUR MANUFACTURING PLANTS ARE LOCATED IN SAN ANTONIO, TEXAS, AND IN CRESTVIEW, FLORIDA, OCCUPYING APPROXIMATELY THREE-QUARTERS OF A MILLION SQUARE FEET OF MANUFACTURING FACILITIES WITH CURRENT EMPLOYMENT LEVELS OF SLIGHTLY UNDER 1000.

WORLDWIDE THERE ARE NINE MANUFACTURERS OF 15-19 COMMUTER AIRCRAFT, TWO OF WHICH ARE AMERICAN, FAIRCHILD AIRCRAFT AND BEECH AIRCRAFT. THE REMAINING SEVEN ARE FOREIGN AND EACH IS EITHER OWNED OR SUBSIDIZED BY ITS RESPECTIVE GOVERNMENT.

FAIRCHILD AIRCRAFT CORPORATION OVER THE PAST TEN YEARS HAS DELIVERED APPROXIMATELY 160 METRO AIRCRAFT TO 40 OF THE 260 U.S. COMMUTER AIRLINES. THESE 160 AIRCRAFT, REPRESENT ABOUT 15% OF THE TOTAL U.S. COMMUTER SEATING CAPACITY AND ABOUT 35% OF THE 15-19 SEAT COMMUTER MARKET.

IN 1978, OUR SHARE OF THE U.S. 15-19 PASSENGER AIRCRAFT MARKET WAS 60%. TODAY IT IS 24%. NEW SALES ORDERS HAVE FALLEN BY NEARLY 80% SINCE 1981 AND OUR PRODUCTION RATE HAS PLUMMETED BY TWO-THIRDS SINCE 1980. OUR CAPACITY UTILIZATION HAS FALLEN TO 20%.

What was once a marginally profitable industry has been converted to a loss situation for Fairchild Aircraft Corporation. As a result, we have been forced to lay off more than 75% of our Metro work force, affecting over 1000 families.

These losses we are incurring are a direct result of under-priced imports from our foreign competition, most particularly from Embraer of Brazil. Embraer, which is 51% owned by the Brazilian government, produces the Bandeirante, an 18 passenger turboprop commuter aircraft.

Over the past 5 years, Embraer has concentrated its sales efforts in the U.S., which represents 50% of the worldwide commuter aircraft market. Since 1978 when the Bandeirante was first introduced into U.S. service, Embraer's U.S. market share has rocketed from 7.4% to 38%, consuming two-thirds of the total Bandeirante output.

Embraer has achieved this U.S. market penetration through the use of unfair development, manufacturing and export subsidies provided directly to Embraer by the Government of Brazil and preferential financing provided to U.S. customers by the Government of Brazil.

To give you a brief overview of the U.S. commuter airline operators susceptibility to low financing rates, the average net income of 17 of the top 50 commuter airlines (for which financial data is available) was a loss of $969,000 for the 18 month period January 1981 to June 1982. As of June 1982, 58% or 11 of the top nineteen commuter operators had a negative net worth. Of the remaining 231 operators, the percentage of those with negative worth is greater.

AS CAN BE EXPECTED, U.S. COMMERCIAL LENDING INSTITUTIONS ARE VERY CAUTIOUS IN APPROACHING THE PROSPECT OF LENDING LARGE SUMS OF MONEY TO COMMUTER AIRLINES. AS A RESULT, THEY GENERALLY REQUIRE SUBSTANTIAL PREMIUMS OVER NORMAL LENDING RATES.

ON THE OTHER HAND, BANCO DE BRAZIL, ALSO OWNED BY THE BRAZILIAN GOVERNMENT, WILL GUARANTEE 85% TO 90% FINANCING AT INTEREST RATES OF 8 1/2 TO 9% TO BUYERS OF THE BANDEIRANTE. DURING TIMES OF HIGH INTEREST RATES THESE DISCOUNTED FINANCING TERMS CAN AMOUNT TO A SAVINGS OF UP TO 35% OR $1,000,000 IN TOTAL OUTLAYS OVER A 10 YEAR TERM.

FOR A NEW ENTRANT AIRLINE OR FOR AN AIRLINE EXPANDING TO THE 15-19 PASSENGER SIZE THESE PREFERENTIAL FINANCING TERMS ARE MOST ATTRACTIVE. MORE IMPORTANTLY, ONCE AN AIRLINE COMMITS TO A PARTICULAR AIRCRAFT MODEL WITHIN A SPECIFIC SIZE CATEGORY, IT IS FOR ALL INTENTS AND PURPOSES "LOCKED INTO" THAT PARTICULAR AIRCRAFT SINCE THE COST OF RETRAINING PERSONNEL AND STOCKING SPARE PARTS PECULIAR TO ANOTHER AIRCRAFT MODEL OF THE SAME SIZE WOULD BE PROHIBITIVE.

SOME WOULD ARGUE THAT THE SUCCESS OF THE BRAZILIAN BANDEIRANTE IS DUE SIMPLY TO THE FACT THAT IT IS BETTER SUITED FOR COMMUTER OPERATIONS THAN COMPETITIVE U.S. BUILT AIRCRAFT. LET ME SET THE RECORD STRAIGHT WITH COMPARATIVE SPECIFICATION AND PERFORMANCE DATA.

	Bandeirante	Metro III	%Diff.
Passengers	18	19	5.5% More
	3 abreast	2 abreast	
Cabin Volume	522 cu. ft.	626 cu. ft.	19.9 More
Volume/Passenger	29 cu. ft.	33 cu. ft.	13.8 More
Baggage Volume	113 cu. ft.	166 cu. ft.	46.9 More
Speed	259 mph	322 mph	24.3 More
Range	318 s.m.	942 s.m.	196.2 More
Fuel Consumption	50.7 smpg	69.4 smpg	36.9 More
Pressurization	None	7.0 psi	
Price	$1,750,000	$2,050,000	-14.6 Less
Price/Seat	97,222	107,895	- 9.9 Less

Unquestionably, the U.S. built Metro III is technologically superior to the Bandeirante and the simple truth is Embraer's phenomenal penetration of the U.S. commuter market is primarily as a result of government R&D and manufacturing and other subsidies and government subsidized discounted financing -- especially during periods of high interest rates. Exhibit A charts the correlation between climbing interest rates and Bandeirante U.S. market share growth over the past seven years.

The immediate impact to U.S. industry as a result of foreign predatory financing, aside from loss of American jobs and industry financial losses, is the lack of research and development resources. This lack of R&D funds precludes future growth and, more importantly, permits the massive transfer of aerospace technology never to be regained.

AIRLINES TODAY ARE BUYING BANDEIRANTES BECAUSE FOREIGN GOVERNMENT GUARANTEED LOW COST ACQUISITION IS OBVIOUSLY ADVANTAGEOUS IN HARD TIMES. BUT LOOKING AHEAD, WHY SHOULD U.S. INDUSTRY INVEST IN DEVELOPING NEW TECHNOLOGY PRODUCTS WHEN THE PROJECTED MARKET UPON WHICH THEY DEPEND TO RECOUP THEIR INVESTMENT CAN BE CONSUMED BY FOREIGN GOVERNMENT SUBSIDIZED PRODUCTS? IF BRAZIL CAN GAIN AN ALMOST 40% SHARE OF MARKET IN JUST A FEW YEARS THROUGH FINANCING AND OTHER SUBSIDIES, WHAT PREVENTS MORE TECHNOLOGICALLY ADVANCED COUNTRIES FROM DUMPING SUBSIDIZED PRODUCTS IN U.S. MARKETS?

OVER THE LAST TWO YEARS, LARGELY AS A RESULT OF AIRLINE DEREGULATION, U.S. REGIONAL COMMUTER CARRIERS EXPERIENCED A 26% INCREASE IN TRAFFIC AS THEY BEGAN SERVING MARKETS ABANDONED BY COMMERCIAL JET TRANSPORT OPERATIONS. THESE NEW MARKETS ARE FORCING THE COMMUTERS INTO LARGER AIRCRAFT -- 20 TO 40 SEATS. THE 20-40 SEAT SIZE AIRCRAFT IS PROJECTED TO BE 40% OF TOTAL COMMUTER AIRCRAFT PRODUCTION FOR THE U.S. MARKET OVER THE NEXT TEN YEARS, AGGREGATING SOME 2000 UNITS.

FAIRCHILD INDUSTRIES IS THE ONLY U.S. AIRCRAFT MANUFACTURER DEVELOPING AN AIRCRAFT TO COMPETE IN THIS MARKET; AND TO MINIMIZE OUR RISK AGAINST FOREIGN COMPETITION, WE ARE CO-DEVELOPING THIS NEW AIRCRAFT, THE SF-340, ON A 50-50 JOINT VENTURE BASIS WITH SAAB-SCANIA OF SWEDEN. THE ANNOUNCED COMPETITION FOR THIS LIMITED MARKET IS:

- ° THE ATR-42 BUILD JOINTLY BY AEROSPATIALE OF FRANCE AND AERITALIA OF ITALY -- BOTH GOVERNMENT OWNED AND SUBSIDIZED.
- ° THE BRAZILIA 120 BUILT BY EMBRAER OF BRAZIL -- 51% GOVERNMENT OWNED AND SUBSIDIZED.
- ° THE CN-235 BUILT JOINTLY BY CASA OF SPAIN AND NURTANIO OF INDONESIA -- BOTH GOVERNMENT OWNED AND SUBSIDIZED.
- ° THE SHORTS 360 BUILT BY SHORTS OF IRELAND -- GOVERNMENT SUBSIDIZED.
- ° THE DASH 8 BUILT BY DEHAVILLAND OF CANADA -- GOVERNMENT OWNED AND SUBSIDIZED.

THESE RELATIVELY ADVANCED MANUFACTURERS CLEARLY RECOGNIZE HOW LUCRATIVE THE U.S. MARKET (50% OF THE WORLD MARKET) CAN BE AND, BY HEAVILY SUBSIDIZING FIRST AIRCRAFT DELIVERIES THROUGH PREFERENTIAL FINANCING, THEY GUARANTEE A STREAM OF FOLLOW-ON AIRCRAFT.

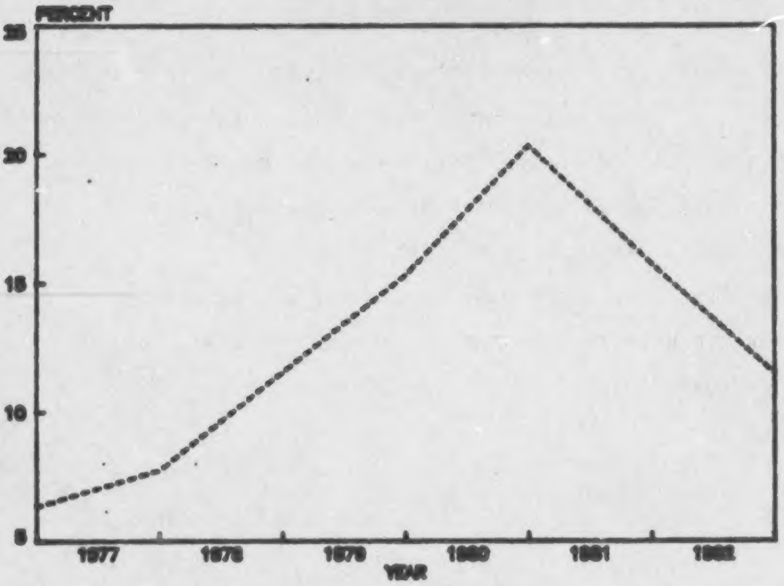
FIRST DELIVERIES OF THESE NEW AIRCRAFT ARE SCHEDULED FOR 1984-1985, CONSEQUENTLY SALES CAMPAIGNS HAVE BEEN UNDERWAY FOR ABOUT TWO YEARS TO SECURE EARLY DELIVERY POSITIONS. DURING THIS PERIOD WE HAVE BEEN COMPETING AGAINS 85% TO 100% FINANCING AT A FIXED 10% RATE FROM AEROSPATIALE/AERITALIA AND 100% FINANCING AT 12% TO 14% RATES FROM DEHAVILLAND OF CANADA.

WE ARE NOT ASKING FOR "PROTECTION", WE SIMPLY WANT TO BE ALLOWED TO COMPETE ON AN EQUAL BASIS IN THE U.S. MARKETPLACE. NO PRIVATE U.S. INDUSTRY, OWNED BY INDIVIDUAL STOCKHOLDERS WHO EXPECT ONLY A FAIR RETURN ON THEIR INVESTMENT, CAN BE EXPECTED TO COMPETE WITH THE RESOURCES OF FEDERAL GOVERNMENTS OF OTHER NATIONS WHO ARE DETERMINED TO BUILD AN AEROSPACE TECHNOLOGY BASE, CREATE IN-COUNTRY EMPLOYMENT AND OFFSET TRADE DEFICITS.

WE BELIEVE THIS ISSUE GOES BEYOND ANY SINGLE COMPANY -- IT IS FUNDAMENTAL TO WHETHER THIS NATION WILL ASSURE THAT FREE ENTERPRISE SURVIVES.

THANK YOU.

PRIME LENDING RATE



15–19 PASSENGER MARKET SHARE

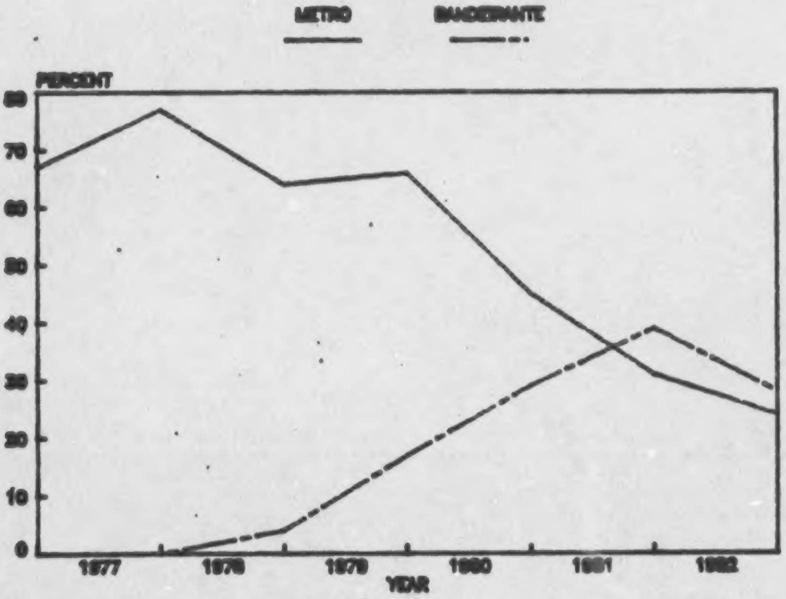


EXHIBIT A

WRITTEN TESTIMONY SUBMITTED BY
TOM FOERSTER
CHAIRMAN OF THE BOARD OF COMMISSIONERS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CHAIRMAN OF THE STEEL COMMUNITIES COALITION

BEFORE THE STEEL CAUCUS,
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1983

TERNOON

My name is Tom Foerster, and I am the Chairman of the Board of Commissioners of Allegheny County. I am also Chairman of the Steel Communities Coalition, a group of elected local officials from steel areas across the country.

I regret that I am unable to attend this morning's proceedings, but I would like to assure you that my own interest and that of many other elected officials across the country are keenly focused on the topic before the Caucus this morning: unfair steel trade.

A little over a year ago, complaints were filed before various federal agencies by nearly all of the major domestic steel makers. These complaints charged that many European steel producers were receiving subsidies from their governments, and as a result were able to export steel to the United States at prices which did not reflect actual costs of production, thus affording the Europeans an unfair advantage in our own market.

The Allegheny County Board of Commissioners became involved in these cases in May of 1982, shortly after a majority of the complaints had been capriciously and summarily dismissed by the International Trade Commission. The ITC is the federal judicial panel responsible for defending domestic industries from unfair foreign competition under existing U.S. Trade Laws.

OUR FIRST ACTION WAS TO OPEN THE LINES OF COMMUNICATION WITH ELECTED LOCAL OFFICIALS FROM STEEL COMMUNITIES ACROSS THE COUNTRY. WITH THE SUPPORT OF OVER SIXTY OF THESE COMMUNITIES, WE PROCEEDED TO IMPLEMENT OUR ATTACK.

OUR FIRST MAJOR INITIATIVE WAS THE FILING OF AN AMICUS CURIAE, OR FRIEND OF THE COURT BRIEF, BEFORE THE U.S. COURT OF INTERNATIONAL TRADE ON THE CASES WHICH HAD BEEN DISMISSED AND SUBSEQUENTLY APPEALED. THE ACCEPTANCE OF OUR BRIEF FOR THE RECORD BY THE TRADE COURT ESTABLISHED A PRECEDENT, IN THAT THIS WAS THE FIRST OCCASION WHERE DAMAGES TO COMMUNITIES AS A RESULT OF UNFAIR IMPORTS WAS ACCEPTED AS A LEGAL ARGUMENT FOR REVIEW.

OUR SECOND ACTION WAS TO OFFER SIMILAR ARGUMENTS TO THE INTERNATIONAL TRADE COMMISSION IN SEPTEMBER OF 1982 ON THE CASES WHICH HAD BEEN HELD BY THE ITC FOR FINAL DECISION. AS YOU MAY BE AWARE, THE ITC RULED IN FAVOR OF THE DOMESTIC STEEL MAKERS IN OCTOBER, A DECISION WHICH WAS INSTRUMENTAL IN BRINGING THE EUROPEAN ECONOMIC COMMUNITY TO A MUTUALLY ESTABLISHED ORDERLY MARKETING AGREEMENT DURING ELEVENTH HOUR NEGOTIATIONS UNDER THE PRESSURE OF U.S. SANCTIONS.

I MENTIONED EARLIER THAT THE FEDERAL GOVERNMENT'S RESPONSE TO THE ISSUE OF UNFAIRLY SUBSIDIZED STEEL IMPORTS HAS BEEN PAINFULLY SLOW; IT HAS ALSO BEEN PAINFUL IN TERMS OF COSTS. WHEN WE BECAME INVOLVED IN THESE IMPORT CASES LAST MAY, THERE WERE APPROXIMATELY 99,000 STEELWORKERS ON LAY-OFF STATUS AND IMPORTS HAD CAPTURED 22% OF THE

DOMESTIC MARKET. WHILE WE FOLLOWED THE TIME CONSUMING COURSE PRESCRIBED UNDER EXISTING U.S. TRADE LAWS, ANOTHER 22,000 STEELWORKERS BECAME UNEMPLOYED, CAPACITY UTILIZATION IN THE DOMESTIC INDUSTRY FELL TO 30% LEVELS, AND THE SHARE OF THE U.S. MARKET ABDUCTED BY IMPORTS ROSE TO 26%!

I SHOULD QUALIFY THESE REMARKS BY EXPLAINING THAT THE COMPLAINTS WHICH I HAVE REFERRED TO PERTAIN ONLY TO CARBON STEEL. STAINLESS AND OTHER SPECIALTY STEEL PRODUCERS IN THIS COUNTRY FILED SIMILAR UNFAIR SUBSIDIZATION COMPLAINTS EVEN BEFORE THE CARBON STEEL CASES WERE INITIATED. THE U.S. SPECIALTY STEEL INDUSTRY HAS BEEN RECOGNIZED AS A LEADER IN TERMS OF MODERNIZATION, EFFICIENCY AND COMPETITIVENESS, YET THEIR FATE HAS BEEN IN THE HANDS OF WASHINGTON FOR OVER A YEAR.

GENTLEMEN, WE FIND THE COURSE PRESCRIBED UNDER CURRENT U.S. TRADE LAWS TO BE UNTIMELY, COSTLY AND THEREFORE INEFFECTIVE IN PREVENTING OR HALTING THE DAMAGE TO PEOPLE AND COMMUNITIES DEPENDENT UPON STEEL IN THIS COUNTRY.

UNFAIRLY TRADED IMPORTS HAVE HELPED TO ROB US OF AN IMPORTANT SOURCE OF JOB OPPORTUNITIES, INCOME, TAX REVENUES AND PRIDE. WE HAVE 164,000 FEWER STEEL WORKERS TODAY (1982) THAN WE HAD THREE YEARS AGO, SOME OF WHOM HAVE LOST THEIR HOMES AND ALL HOPE OF EVER GOING BACK TO WORK AT THE MILL. WE HAVE LOCAL GOVERNMENTS THAT HAVE BEEN FORCED TO CUT BASIC SERVICES SUCH AS POLICE AND FIRE PROTECTION, SOME OF WHOM HAVE FOUND IT NECESSARY TO SEEK HELP EVEN FROM RICH ARABIAN SHEIKS. A COPY

OF MY TESTIMONY BEFORE THE INTERNATIONAL TRADE COMMISSION LAST FALL ON BEHALF OF STEEL COMMUNITIES IS ATTACHED TO THESE COMMENTS, AND MAY HELP TO UNDERSCORE THE DEGREE OF MISERY WHICH I HAVE ALLUDED TO.

THEREFORE, GENTLEMEN, IT IS IMPERATIVE THAT CONGRESS FULLY UNDERSTAND THE GROWING SENTIMENT AT THE LOCAL LEVEL IN FAVOR OF STRONGER TRADE LAWS WHICH PROTECT DOMESTIC WORKERS AND INDUSTRIES FROM UNFAIR TRADE PRACTICES. SPECIFICALLY, THERE IS A GREAT DEAL OF SUPPORT AND DEMAND FOR REVISIONS TO ALLOW DOMESTIC INDUSTRIES TO PROSECUTE UNFAIR TRADE CASES FOR INJUNCTIVE RELIEF AND COMPENSATORY DAMAGES. THERE IS ALSO SUPPORT FOR PROVISIONS WHICH WILL ESTABLISH QUOTAS ON PRODUCTS SUCH AS STEEL, TO ALLOW THE DOMESTIC INDUSTRY THE TIME AND OPPORTUNITY TO MODERNIZE WITHOUT THE RESTRAINTS IMPOSED BY CHEAP, SUBSIDIZED IMPORTS.

AS A REPRESENTATIVE OF GOVERNMENT AT THE GRASS ROOTS LEVEL, I URGE THIS CAUCUS TO REFORTIFY ITS EFFORTS TO DEFEND OUR WORKERS AND COMMUNITIES THROUGH STRENGTHENED TRADE LAWS. THE UNITED STATES CANNOT AFFORD TO HOLD FAST TO THE ARCHAIC AND NAIVE ASSUMPTION THAT ALL NATIONS OF THE WORLD ABIDE BY THE SAME RULES OF FAIR PLAY. THAT NOTION FAILS TO RECOGNIZE THAT OTHER NATIONS HAVE IN FACT SUBSIDIZED AND NURTURED THEIR STEEL INDUSTRIES, AND HAVE ENCOURAGED THEM TO EXPORT SURPLUS PRODUCTION TO THE UNITED STATES TO ACHIEVE SOCIAL OBJECTIVES RELATING TO EMPLOYMENT AND POLITICAL STABILITY. IN SHORT, WE MUST ADOPT TOUGHER POLICIES WHICH RECOGNIZE THE LESS THAN SUBTLE DIFFERENCES BETWEEN FREE AND FAIR TRADE.

THANK YOU.

PRESENTATION OF MR. THOMAS DICECCO TO THE CONGRESSIONAL STEEL CAUCUS: FEBRUARY 23, 1983.

PRESENTED ON BEHALF OF THE AMERICAN MUSHROOM INSTITUTE

Mr. Chairman, Members of the Committee:

My name is Thomas DiCecco. I am President and General Manager of the Oxford Corp., Oxford, PA, a small mushroom canning firm. I am here today representing the AMI, a national mushroom industry organization based in Kennett Square, PA. The AMI consists principally of mushroom farmers, although the membership also includes supplier associate members and the few remaining canners that have yet survived the adverse impact of imports, principally from Taiwan, Korea, Hong Kong, Macau and Communist China. We are pleased to join any effort to stymie unfair trade.

During today's limited time, I shall take 5 minutes to relate the concept of our dilema rather than deluge you with statistics. There are plenty available for further study.

Since 1964, the U.S. Mushroom industry has been investigated by the International Trade Commission ten times. As a result of most investigation, the ITC recommended the imposition of quantitative or other restrictions upon exporting countries. Quantitative recommendations were never imposed although various methods of control were attempted ranging from "consultations" with exporting countries, informal agreements of voluntary restraints and an increase in the tariff rate in Nov. 1980.

None of these control or relief attempts were successful to any degree. The consultations were an exercise in futility, the informal agreements of voluntary restraints were ignored, and the effect intended by the increased tariff was offset by the nearly concurrent admission of Communist China who simply adjusted their base prices to compensate buyers for the higher tariff.

When the U.S. first removed the trade barriers from Communist China, the duty rate for a communist country was 45%. At the Ways & Means MFN hearing for China, I showed the committee Chinese trade journals advertising where they would adjust for the pre-MFN rates, enticing U.S. buyers to purchase their products. So, the only relief ever given to the mushroom industry, the increased tariff, has resulted in over $31 million dollars being placed into the general fund, caused by our petition...not a nickle of it going to help the mushroom industry. At the same time the tariff was increased, a presidential order of "expedited adjustment assistance"for the mushroom industry was issued to the Department of Commerce.

Many firms had applied for assistance and were certified as injured although only one firm received a loan guarantee. The remaining firms were unable to reckon with the insurmountable bureaucracy posed by the financial assistance section of the Dept. of Commerce. My firm has been working on such an adjustment assistance loan for 3½ years now, having expended about $75,000 in compilation of data and accounting only to be told last week, that although the financial review section has completed its review and approved my application, no more adjustment assistance applications were being approved by orders to the D.A.S.

The effect has been devastating. The number of mushroom canners has been reduced from 35 to 17. The prices paid to farmers in the past year was about 60% of their costs. In their August 1980, report, the ITC stated there were approximately 1,500 cannery workers. In their September 1982 report, the ITC then reported there are 950 cannery workers. In that short time a 37% reduction occurred.

The entire mushroom industry, farming, canning, and direct suppliers employs about 14,000 people. We believe that another 10,000 people are employed by indirect suppliers including people in the local corner grocery, auto dealerships, laundry, and various businesses in the mushroom intensive areas.

This industry is now operating at less than 50% efficiency. We believe that some percent may be attributed to unemployment totaling 10-12,000 people throughout our industry.

The argument of a lagging economy is not acceptable in this instance In their July 1982 market research report, the U.S.D.A. Marketing Service reported a 250% increase in total mushroom consumption from 1971 to 1981. For that same period they report a 344% increase in imports. During the last 3 years, mushrooms from China have grown from 265,000 canned pounds to 27,400,000 canned pounds. During the first six months of 1982, mushrooms grown in Communist China alone dominated 58% of all mushrooms imported.

Gentlemen, the American mushroom industry cannot compete with foreign suppliers because of our substantially higher wages, regulatory requirements and no government subsidy, not withstanding aid of any sort.

We implore you to recognize that our free-enterprise system cannot be sacrificed for promotion of strategic alliances intended to protect the free-enterprise system.

The AMI stands ready to provide any additional information you may desire in your consideration.

Thank you for this opportunity to present our views.

Chairman **Gibbons**. Mr. Pease?

Mr. **Pease**. Mr. Chairman, I heard Mr. Gaydos' original testimony and then I had to leave before the questioning. I would like to commend him for his testimony and especially for the specific suggestions for change in the remedies that are contained in his testimony. I think that is very, very helpful.

Mr. **Gaydos**. I would like to thank my colleague. I would like to mention to him we had people from Ohio before the Steel Caucus in the fastener industry and they made excellent presentations, and I have made that available to the committee and to the chairman, and he has very graciously accepted it as a matter of record.

Chairman **Gibbons**. Yes, and I want to read that personally. If you have another copy, I would like to read it because by the time it gets into the record, I may have failed to read it.

Mr. **Gaydos**. Excellent testimony from Ohio, Mr. Chairman.

Chairman **Gibbons**. OK. One of our most interesting field trips or plant tours in Japan was of a very modern steel plant, and one of the questions that I asked of the management there was whether there had been any government assistance in the building of the plant. The response was in the negative, that there had not been. It was a very impressive piece of machinery.

Mr. **Pease**. Would the gentleman yield?

Chairman **Gibbons**. Yes, sir.

Mr. **Pease**. I didn't want to raise that point because I wasn't sure whether it had been raised in my absence or not.

Chairman **Gibbons**. No, we had not talked about it. Go ahead.

Mr. **Pease**. Mr. Gaydos, you and I ought to sit down and talk some time about the field trip this committee took to the Nippon Kokan steel mill just outside of Toyko. It shows what we are up against in terms of technology, before the discussion turns to any unfair trade practices. We were told that this plant cost $5 billion to build. It has been open only a few years. And it struck me that $5 billion is just $1 billion less than United States Steel paid for Marathon Oil Co.

If we had committed our resources in the United States someplace other than where we put them, we might have had a nice spanking new steel mill as well. I thank the chairman for yielding.

Mr. **Gaydos**. If I could respond, Conneaut was on the drawing board as a new greenfield plant for United States Steel. They had to just walk away from it because the latest cost would be around $7 billion, and they just didn't have the money.

I do want to say this. Possibly they could have built that instead of acquiring Marathon. That is a possibility. But diversification seems to be the thing today and maybe it would help the steel aspect. I wouldn't want to interfere with our free corporate activities in this country. I think it has given everybody a good living, so I hope it continues.

The point I would like to make for the chairman and the committee is that when we had limitations for the specialty steel and the specialty steel industry, every one of them promised and as a condition precedent did put all of their money into refurbishing and modernizing the specialty steel industry. We do have now a specialty steel industry, it is the most modern in the world. And that is in this country, more modern than Japan. All acknowledge this.

And yet that industry right now is going down the drain, even though it is the most modern. So sometimes that confounds my thinking. We have modernized in this particular segment. Something is wrong maybe more basically, and I know that this committee is addressing that problem.

I want to close, Mr. Chairman, if I may, and suggest that this is probably one of the most important problems and considerations we are going to have in this Congress. I really believe that because all paths seem to lead toward our imbalance in trade, both balance of trade and merchandise. This committee has awesome responsibility and always has had, but now it is emphasized, thrust upon you to solve this problem in a timely fashion and one that would be in accord with international tranquility.

So I sympathize with the committee and again I want to emphasize that as long as I am over there, I am sure you will have the cooperation, after a fashion of the Steel Caucus.

Chairman **Gibbons**. Well, I want to bring up another point, and I know it is very sensitive, so I am not going to ask anybody to respond to it. All the trade laws we pass are not going to solve the problem unless there is a mutual feeling of responsibility on the side of the industry and of labor.

I noticed in one of the publications of the Steel Caucus recently that you sent around to our offices about a month and a half ago, and I hope I am reciting it correctly because I don't want to mislead anybody, after World War II labor costs in the steel industry were about 15 percent above other industrial labor costs, but last year, while the steel industry was losing jobs, the labor costs in the steel industry ran up to 114 percent higher than the average industrial labor cost in the United States.

Now, that is a shocking figure. As I said once before, I don't know how the rest of American labor or the rest of American industry can afford that high a labor cost when the productivity, because of the plant condition, is so low that it means that American industry as a whole is penalized vastly. High labor costs times inefficient plant equals bankruptcy.

And all the trade laws in the world that we pass are not going to remedy that situation unless there can be a deep feeling of responsibility on the part of labor and management in this. It is a serious problem. I don't ask for anybody to respond to that but I just wanted to close on that observation.

Mr. Jenkins, would you like to inquire?

Mr. **Jenkins**. Mr. Chairman, I apologize for being late. I simply want to echo the statement that you just made. I think this has been a perennial problem for a long, long period of time. The committee in the past occasionally has had both labor and management on a panel at the same time and I posed the very identical question.

I want to do everything that I can, as I will continue to do, for the domestic steel industry. But I do recognize, as the Chairman has pointed out, that I don't know how we can really address the problem until they sit down together and address the problem. I don't think we can simply continue with that type of percentage increase in labor costs.

I thank you, Mr. Chairman.

Mr. GAYDOS. If I may respond, Mr. Chairman, as is your custom, you are very adroit and you are very kind. You are not posing the problem for me but I am going to take a crack at it.

Chairman GIBBONS. That is all right.

Mr. GAYDOS. Mr. Chairman, I believe that there has to be some retrenchment, and I would be very naive to sit here before this illustrious committee and suggest for one moment that the steel worker, who is a very highly paid worker, doesn't have to take his lumps. He has taken a paycut and benefit reduction. He is going to have to take his lumps. There is going to be some retrenchment. It is not as healthy an industry as it was before.

I asked that same question repeatedly of members of the AISI a very short time ago.

I asked your question repeatedly of the AISI, and that was Mr. Troutman, Mr. Roderick, everybody who came down the line: Is labor cost your problem? Is that what is making you noncompetitive? And up until the contract matter a short 6 months ago, please believe me, and the record is there, they always said no, that the differential between the Japanese payment and the American payment to the worker at that time was not that great. They made it up in other different factors.

They said no, all we want is just fair imports and we can compete with their cost per hour basis. This is what they said repeatedly.

Now when the contract expired, I heard a lot of information repeated that the costs were too high. Again, that brings me hopefully, as a reasonable man, to the conclusion that some kind of adjustment has to be made. They have made it up until now in some concessions, and whether there are going to be more or less I don't know, but I think the point is well taken.

Chairman GIBBONS. Are there any other questions or observations from the committee?

[No response.]

Chairman GIBBONS. Thank you, Mr. Gaydos.

Mr. GAYDOS. Thank you so much, Mr. Chairman, for allowing us to testify.

Chairman GIBBONS. Our next witness is Senator John Heinz, U.S. Senator from Pennsylvania. Senator, we recognize you as not only a former member of this body but also an outstanding Member of the Senate. We recognize your important role on the Finance Committee and on its Trade Subcommittee. We appreciate your coming here to help us with this problem.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you very much. Recognizing the attitude of this body, I know you feel that when I go to my just rewards, having been a Member of the House will weigh much more heavily in my favor than anything I might have done before or since.

I very much appreciate the opportunity to appear before your subcommittee today, Mr. Chairman, and I congratulate you and the other members of this subcommittee for taking the initiative on trade law reform and in scheduling these hearings. Your efforts in this Congress and the last constitute, quite honestly, the only meaningful oversight and review of the many changes Congress made in our trade laws in 1979.

I do hope that the Senate will act with equal efficiency and thoroughness if and when you present us with a bill.

Now I, as you know, have over the past 6 years made numerous proposals for a change in our trade laws. Some of them have been enacted. Some are part of the 1979 trade law. Some have not been enacted. I also anticipate having some additional proposals in the near future—some new, some from previous years—some borrowed, something blue—such as the nonmarket economies bill that I will discuss today.

But rather than take up the subcommittee's time with a litany of different proposals, I want to discuss only two proposals in any detail. First, my bill from the last Congress, S. 958 which proposed major changes in the way we calculate and determine unfair trading practices by nonmarket economies and second, my bill recently introduced, S. 849, to link import relief more effectively with real adjustment in the domestic industries.

The two are similar, Mr. Chairman, at least in my judgment, in that they both tackle problems we admittedly do not handle well under present law. Both are designed to conform our trade law structure to real world problems and both are intended to inject greater certainty into the law.

Your request for comments on nonmarket economy issues is particularly timely due to the growing complexity of our trade relations with nonmarket and socialist nations. Increased trade has produced more unfair trade practice cases involving nonmarket economies and consequently more dissatisfaction with present law based largely on one fundamental deficiency. The concept of dumping sales at less than [illegible] market value is an inherently free market concept. It is useful only to the extent that costs and prices in an economy are real, so that a fair value can in fact be determined.

With rare exceptions, those conditions simply don't exist in the nonmarket economies and our law has become seriously contorted in an effort to logically deal with this fundamental inconsistency.

Since 1978, U.S. administrative regulations have attempted to cope with these problems through the use of the comparable economy concept, which I will not take the time to describe. Our experience with this concept over the years has proved its inadequacy, and my written statement, which I would like to submit, Mr. Chairman, provides more details on its problems.

S. 958, which I introduced in the last Congress, sought to deal with this problem by creating a new system based on the principles of treating nonmarket economies as much like Western economies as possible and providing a fair and more certain means of determining whether an unfair practice has occurred.

My written statement describes the bill in greater detail, Mr. Chairman. Suffice it to say that I have tried to create with this legislation a carrot and stick mechanism that will encourage nonmarket economies to cooperate with our Government in investigating the allegations and petitions filed against them and to adjust their economies in a way that will permit such cooperation to take place.

Every opportunity is presented to treat these countries precisely as all other nations are treated under our laws, even to the extension of the injury test in appropriate circumstances. This represents something of a normalization of present law, while at the same time the alternative lowest average price, a free market producer test, provides a certainty and administrative ease of determination absent in present regulations.

The bill, Mr. Chairman, was not enacted last year, despite administration support for it, due to a controversy over the lowest average price standard. Some private sector groups preferred a higher standard, one that would, in effect, give them more protection, alleging that the language in the bill would effectively permit sales at less than fair value.

Time and the Congress ran out before we could resolve that problem. However, I remain confident that we will be able to resolve it. I plan to reintroduce in this Congress a bill virtually identical to S. 958 shortly.

My other proposal, Mr. Chairman, is intended to deal with the rapidly changing international trading system and our changing role in it. If one looks at the trading role today as opposed to that of 20 or 30 years ago, one sees:

One, advances in communications and transportation that create a true world market by giving our manufacturers new access abroad and similarly exposing them to new competition from abroad;

Two, the increased importance of trade as a replacement for the domestic market, both as a source of growth through exports and as a source of new pressures from foreign manufacturers likewise seeking such growth;

Three, a greater awareness of unfair trading practices and the barriers, thanks to the MTN process which labeled the barriers, made them public, and created in people's minds the idea that they could seek redress either unilaterally through domestic law or multilaterally through the GATT;

Four, the widespread failure of developed countries, including our own, to pursue adjustment policies for older industries and instead to maintain employment at any cost, a cost most often borne in the United States, as it is exported here through subsidized and dumped production;

Five, the growth in importance of non-Western trading partners, whose economic policies and business methods are at variance with the essentially Western-created and dominated postwar system;

Six, the rapid growth of certain former LDC's, such as Korea, Taiwan, and Hong Kong, without the assumption of new responsibilities concomitant with their new status.

Mr. Chairman, those are all trends. They all remind us that the days are gone when the United States as the world's dominant economic and political power could make the sacrifices to hold the system together at relatively little cost to itself. Power today is more diffuse, and our direct economic stake in the trading system is far greater.

In short, times have changed, but we are failing, at least in this Senator's judgment, to change our behavior with them. One appropriate change is a more aggressive and determined pursuit of greater GATT discipline to facilitate the removal of barriers and improve the operation of the settlement dispute process.

That is why Senator Danforth and I have been pursuing reciprocity legislation for more than a year. However, additional actions are needed to restore competitiveness here at home, and that is why on March 18 I introduced the Industrial Revitalization Act, S. 849, which establishes a mechanism which is consistent, I believe, with our free market system, which includes import relief as an element, but which makes sure that such relief is contingent on the recipient industry also taking stock of itself and preparing and following through on a plan for dealing in depth with its other problems.

S. 849 is an amendment to the escape clause, sections 201, 202, 203, of the Trade Act of 1974. An industry perceiving itself hurt by imports would file a petition with the International Trade Commission under current law. After 45 days the Commission would vote preliminarily on whether injury had occurred or was threatened, as it now does in unfair trade practice cases.

The injury standard will be the same standard as is presently applied in antidumping and countervailing duty cases. A negative vote would terminate the proceedings. An affirmative vote, on the other hand, would have no immediate consequences for imports, but would trigger the procedure for developing an adjustment plan for the industry. .

That process would begin with the creation of a plan preparation committee chaired by an ITC Commissioner, consisting of representatives from labor and management from the petitioning industry, along with representatives from the Departments of Commerce and Labor, as well as Agriculture if appropriate.

This is essentially, Mr. Chairman, a tripartite structure which would develop an adjustment plan for the industry. That plan could include, but certainly is not limited to, such things as coordinated or phased reductions in capacity, technological improvements, investment plans, with or without, which would be my preference, Government assistance, product design changes, productivity improvements, management improvements, cost reductions, relief from other Government regulations, renegotiation of labor contracts, and the like.

Let me make clear—I think there is some misunderstanding on this point occasionally—that I am not talking about a cosmetic plan designed only to open the door to import relief without making any real demands on the industry. I am talking about a sincere, determined effort to make some changes to revitalize the smokestack or sunset, or whatever you want to call them, kinds of industries that we want to keep in this country if we can.

It could include changes in management, changes in contracts with labor that could involve significant concessions on the latter's part, relief from various burdens imposed by law or government, shared research and development projects to develop new technologies, a new marketing strategy, and cooperation on industry restructuring, including phasedown if necessary. The bill contains an antitrust exemption for the latter purpose.

Any plan that is developed must be agreed to by all three of the represented parties, labor, management, and government. Only after such agreement—and I stress that—only after such an agreement is reached will the ITC vote on import relief. Obviously, if there is no such agreement, Mr. Chairman, there will not be any import relief of any kind.

Following the Commission vote, the President is required to implement the recommended relief package without change. There is no Presidential discretion at that point, no inter-agency process at that point, no development of political compromises, which have made the escape clause process so ineffective over the past 9 years.

The administration has its input at the earlier point. The International Trade Commission is the institution determined by Congress to be best equipped to determine injury and develop appropriate import remedies for a petitioning industry, and it is those recommendations that will prevail in the system I am proposing.

Of course, various portions of the adjustment plan may prove to be impossible to implement. One of the parties simply may bow out or renege. A new union contract, for example, might be voted down by the membership. The Government, upon second thought, may refuse to take administrative actions that are part of the plan. Congress may decline to act on legislative proposals.

In addition, even if implemented, the plan might not work. In those circumstances the bill S. 849 provides for revocation of the import relief by the International Trade Commission upon request of the President or one of the parties to the original proceeding, on the grounds that it had not been adhered to in some material way by one or more of the parties. Lack of success of the plan would not be grounds for revocation.

The bill also creates a plan implementation review process, a board within the Commerce Department for each such plan. The board's duties would be to monitor the plan, propose the necessary administrative actions or legislation to implement it, which legislation would be considered under fast track procedures in the Congress, or, after 1 year to propose changes in it.

Mr. Chairman, I want to make clear to you and this committee that this legislative proposal is a draft. It is subject to further revision. It is not the last word. It is an idea. Nothing is more fragile than an idea. My purpose in introducing it, my purpose in exposing it to the light of day, is to try to stop the cycle of requests for import relief followed by inadequate and incomplete Government responses that have characterized the past 10 years for some industries.

Without reform, those cycles are going to repeat themselves. They are going to continue and, inspite of them or maybe even because of them, industries will never make any real progress.

Without ignoring the legitimate problem of imports, we must nonetheless move industrial problems into a larger context and do a better job at integrating import relief into a comprehensive approach to industry revitalization and adjustment. I believe the bill I have been discussing does that. More importantly, it does it without giving the Government any overall central planning role, that would inevitably distort our free market system. It does it without requiring or even providing for any Government loans, loan guarantees or financial support, that I believe are inconsistent with our approach to the nonallocation of capital.

That is not to suggest, once again, that what I am proposing is the only approach or even that this approach is efficient in all its details. For that reason, I am circulating the bill very widely for comment, both from Government and the private sector. Through that process we can perhaps begin to develop what we have not thus far had, namely a comprehensive and thoughtful approach to industries bearing the brunt of a great deal, indeed in some cases a massive amount, of economic and social change.

To that end, Mr. Chairman, I welcome your committee's comments, thoughts, questions, and reactions to this proposal, as well as the nonmarket economies bill, S. 958. And let me just again, Mr. Chairman, thank you for this opportunity to be here.

I am certainly available to answer any questions to the best of my ability, and I commend the committee on these hearings.

[The prepared statement follows:]

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I appreciate the opportunity to appear before the Subcommittee today, and I particularly want to congratulate you for taking the initiative on trade law reform and in scheduling these hearings. Your efforts in this Congress and the last constitute the only meaningful oversight and review of the many changes Congress made in our trade laws in 1979. I hope that the Senate will act with equal efficiency and thoroughness if and when you present us with a bill.

As you know, I have, over the past six years, made numerous proposals for change in our trade laws, some of which have been enacted into law and some of which have not. I also anticipate having some additional proposals in the near future—some new and some from previous years, such as the nonmarket bill I will discuss today.

Rather than take up the Subcommittee's time with a litany of different proposals, I want to discuss only two in some detail—my bill from the last Congress, S. 958, proposing major changes in the way we calculate and determine unfair trading practices by nonmarket economies, and my bill recently introduced, S. 849, to link import relief more effectively with adjustment in the domestic industry. The two are similar, in my judgment, in that they both tackle problems we admittedly do not handle well under present law. Both are designed to conform our trade law structure to real world problems. And both are intended to inject greater certainty into the law.

Your request for comments on nonmarket economy issues is particularly timely due to the growing complexity of our trade relations with socialist nations. Increased trade has produced more unfair trade practice cases involving nonmarket economies and consequently more dissatisfaction with present law, based largely on one fundamental deficiency—the concept of dumping—sales at less than fair value—is inherently a free-market concept. It is useful only to the extent that costs and prices in an economy are real, so that a fair value can be determined. With rare exceptions, these conditions do not exist in a non-market economy, and our law has become seriously contorted in an effort to deal logically with this fundamental inconsistency.

Since 1978, U.S. administrative regulations have attempted to cope with these problems through the use of the comparable economy concept, which I will not take the time to describe.

This approach, however, is flawed in its two basic assumptions that a simple and accurate basis exists for determinng when economies are at comparable stages of development, and that comparable overall levels of development—assuming such can be determined—mean comparable levels within a particular industry. For example, when a country has targeted a particular industry for rapid development in order to stimulate its export sector, the level of development in that industry is likely to be greater than the economy as a whole, thus making industry specific comparisons based on aggregate national analyses, such as those performed under current law, highly misleading.

S. 958, which I introduced in the last Congress, sought to deal with this problem by creating a new system based on the principles of treating nonmarket economies as much like Western economies as possible and of providing a fairer and more certain means of determining whether an unfair practice has occurred.

In S. 958, an interested party would file a complaint against a nonmarket economy alleging artificial pricing. Procedures and time limits for the ensuing investigation are in the same as in a countervailing duty investigation.

During the course of the investigation, the Commerce Department would consult with the nonmarket economy's government and solicit from it information that would enable the Department to determine dumping or the presence of a subsidy subject to the standards of current law for three-market economies.

If, in the Department's judgment, sufficient, verifiable information is provided to permit the case to be treated as a normal antidumping or countervailing duty case, then the Department would do so, moving the investigation to the appropriate law at the same point in time, and applying existing standards.

In those cases where the nonmarket economy will not or cannot provide the necessary information, a different standard would be employed. It would define artificial pricing as sales below the price of the lowest average price free-market producer. Even in this case, however, the petition would be treated pursuant to the time frames and procedures applicable to countervailing duty investigations in existing law.

I have tried to create with this legislation a carrot and stick mechanism that will encourage nonmarket economies to cooperate with our government in investigating the allegations in petitions filed against them and to adjust their economies in a way that will permit such cooperation to take place. Every opportunity is presented to treat these countries precisely as all other nations are treated under our laws, even to the extension of the injury test in appropriate circumstances. This represents a normalization of present law; while at the same time the alternative "lowest average price free-market producer" test provides a certainty and administrative ease of determination absent in present regulations.

The bill was not enacted last year, despite Administration support for it, due to a controversy over the "lowest average price" standard. Some private sector groups preferred a higher standard, alleging that the language in the bill would effectivly permit sales at less than fair value. Time and the Congress ran out before we could resolve that problem. However, I remain confident that we will resolve it, and I plan to reintroduce the bill shortly. Our trading problems with nonmarket economies will only grow in the next decade, and we need to make sure that our laws are fully equipped to deal with those problems.

INDUSTRIAL REVITALIZATION ACT OF 1983

My other proposal, Mr. Chairman, is intended to deal with a rapidly changing international trading system and our changing role in it. If one looks at the trading world today as opposed to that of 20 or 30 years ago, one sees:

Advances in communications and transportation that create a true world market by giving our manufacturers new access abroad and similarly exposing them to new competition from abroad; increased importance of trade as a replacement for the domestic market both as a source of growth through exports and as a source of new pressures from foreign manufacturers likewise seeking such growth; greater awareness of unfair trade practices and barriers thanks to the MTN process, which labeled barriers, made them public, and created in people's minds the idea that they could seek redress either unilaterally through domestic law or multilaterally through the GATT; the widespread failure of developed countries, including our own, to pursue adjustment policies for older industries and instead to maintain employment at any cost, a cost most often borne in the United States as it is exported here through subsidized and dumped production; the growth in importance of non-Western trading partners whose economic policies and business methods are at variance with the essentially Western created and dominated post-war system; the rapid growth of certain former LDCs such as Taiwan, Korea, and Hong Kong, without the assumption of new responsibilities concomitant with their new status.

All these trends remind us, Mr. Chairman, that the days are gone when the United States, as the world's dominant economic and political power, could make sacrifices to hold the system together at relatively little cost to itself. Power is more diffuse, and our direct economic stake in the trading system is greater. In short, times have changed, but we are failing to change our behavior with them.

One appropriate change is a more aggressive and determined pursuit of greater GATT discipline to facilitate the removal of barriers and improve the operation of the dispute settlement process. That is why Senator Danforth and I have been pursuing reciprocity legislation for more than a year.

However, additional actions are needed to restore competitiveness here at home. And that is why on March 18 I introduced the Industrial Revitalization Act, S. 849, which establishes a mechanism which is consistent with our free-market system; which includes import relief as an element; but which makes such relief contingent on the recipient industry also taking stock of itself and preparing a plan for dealing with its other problems.

S. 849 is an amendment to the "escape clause" important relief process contained in sections 201-3 of the Trade Act of 1974. An industry perceiving itself hurt by imports would file a petition with the International Trade Commission, as under current law.

After 45 days, the Commission would vote preliminarily on whether injury had occurred or was threatened, as it now does in unfair trade practice cases. The injury standard will be the same standard as is presently applied in antidumping and countervailing duty cases. A negative vote would terminate proceedings. An affirmative vote, on the other hand, would have no immediate consequences for imports, but it would trigger the procedure for developing an adjustment plan for the industry.

That process would begin with the creation of a plan preparation committee, chaired by an ITC Commissioner, consisting of representatives of labor and management from the petitioning industry along with representatives of the Departments of Commerce and Labor, as well as Agriculture, if appropriate.

This is, essentially, a tripartite structure which will develop an adjustment plan for the industry. That plan can include (but is not limited to): coordinated and/or phased reductions in capacity; technological improvements; investment plans with or without government assistance; product/design changes; productivity improvements; management improvements; cost reductions; and relief from other government regulations.

Let me make clear I am not talking about a cosmetic plan designed only to open the door to import relief without making any real demands on the industry. I am talking about a sincere and determined effort to make some changes to revitalize the industry. They could include changes in management, changes in contracts with labor that could involve concessions on the latter's part; relief from various burdens imposed by law or government, shared research and development projects to develop new technologies and/or marketing strategies, and cooperation on industry restructuring, including phasing down, if necessary. The bill contains an antitrust exemption or the latter purpose.

Any plan that is developed must be agreed to by all three of the represented parties—labor, management, and Government. Only after such agreement is reached will the ITC vote on import relief.

Following the Commission vote, the President is required to implement the recommended relief without change. There is no Presidential discretion, no interagency process, and no development of "political" compromises, which have made the escape clause process so ineffective over the past nine years. The International Trade Commission is the institution determined by Congress to be best equipped to determine injury and develop appropriate import remedies for a petitioning industry, and it is those recommendations that will prevail in the system I am proposing.

Of course, various portions of the adjustment plan may prove impossible to implement. One of the parties may renege. A new union contract, for example, may be voted down by the membership. The Government, upon second thought, may refuse to take administrative actions that are part of the plan. Congress may decline to act on legislative proposals. In addition, even if implemented, the plan may not work.

In those circumstances, S. 849 provides for revocation of the import relief by the ITC, upon request of the President or one of the parties to the original proceeding, on the grounds that it had not been adhered to in some material way by one or more of the parties. Lack of success of the plan would not be grounds for revocation. The bill also creates a plan implementation review board within the Commerce Department for each such plan, whose duties would be to monitor the plan, propose necessary administrative actions or legislation to implement it, which legislation would be considered under "fast track" procedures in the Congress, or, after one year, to propose changes in it.

I want to make clear this is a draft, subject to further revision. My purpose in introducing it is to try to stop the cycle of requests for import relief followed by inadequate and in complete government responses that have characterized the past 10 years for some industries. Without reform, the cycles will continue, and industry will never make any real progress. Without ignoring the legitimate problem of imports, we must nonetheless move industrial problems into a larger context and do a better job at integrating import relief into a comprehensive approach to industry revitalization and adjustment.

I believe the Industrial Revitalization Act does that. More importantly, it does it without giving to Government an overall central planning role that would inevitably distort the free-market system, as it has done in so many other countries. That is not to suggest, however, that this is the only such approach, or even that this approach is efficient in all its details. For that reason I am circulating this bill widely for comment, from both Government and the private sector. Through that process we can perhaps begin to develop what we have not thus far had—a comprehensive and thoughtful approach to industries bearing the brunt of economic and social change.

To that end, Mr. Chairman, I would welcome your Committee's comments on this proposal, as well as on S. 958.

Chairman GIBBONS. Well, thank you, Senator. We appreciate you coming over here to increase the dialog between the House and the Senate on these trade matters. It is something that we need to do. I am as guilty of not doing it as anyone else, and I am glad that you are here to talk with us about these matters.

On the nonmarket economies, frankly, that needs more oversight. I recognize that in the press of other business we have had before this committee we have not been able to do enough on the nonmarket economies and the oversight of that, and perhaps some legislation such as you recommend would be an appropriate solution to that, if and when we determine the size, the scope of the problems.

As I recall, when we were drafting trade acts we had a lot of trouble with the concept of how to deal with nonmarket economies. I have never been satisfied in my own mind that we are dealing with them correctly.

On your other proposal, it is an interesting proposal. I recognize in it some of the things that the other countries are doing in their own industrial policy. Some of their proposals go much further, there is a much greater government intervention and subsidy angle. That is one of the things I am very critical of, the government subsidy and intervention.

I noticed on our trip through Japan that the Japanese are not only targeting up, they are targeting down. They are targeting to get rid of industries, and some of that targeting down denies us an opportunity to fair market access, because they are in the process of trying to rationalize, at the least possible expense to themselves, some of their industry.

So I want to pay more attention to it. But the main point I would like to get over with you and with your colleagues over there is that we need to do something this year about the unfair trade practices. We need to speed up the remedy to make it less expensive and to make it more certain where there is a case.

And I would plead with you, let us put that first on the agenda this year and see if we cannot get something done. I am afraid if we get a full-blown trade bill out there, with all the ideas that all of us have—and I have a lot of them myself, other than just the unfair trade remedies—that we are going to get something that is unmanageable as far as the legislative process is concerned.

I can assure you, that does not mean that we are going to sit on or squelch any ideas. But when I look at the agenda of the Ways and Means Committee this year and the agenda of this subcommittee, the mandatory things that we must accomplish in the time which we have to accomplish them, we are going to have to rush full speed ahead with no restraints just to get the unfair trade practices matters properly dealt with. That is my concern.

Yes, sir?

Senator HEINZ. Mr. Chairman, I do not think we have any disagreement on that point. I had hoped I made clear in my statement, I have made it clear on many other occasions, that I would not expect Congress to act or even to really get into serious consideration of this kind of a new idea this year.

I think there are a lot of things that come first. But as you state, that does not mean that we should not lay the groundwork, starting as early as possible for action at some future date, not to be confused with what this committee is trying to do on as fast a track as possible right now. I certainly agree with you.

Chairman GIBBONS. I am appreciative of your constructive thinking. You are thinking ahead of us and I appreciate that. We need somebody out there pushing.

And so, I did not want anything that I said about your proposals to be detractive of them. They require a high place on our agenda and they will receive that high place. What I am pleading for, though, is let us get some action on something that is apparent right now, and that is unfair trade practices.

We have got to put an end to subsidy practices, our own and other people's. And we have got to put an end to predatory types of practices, our own and other people's. And if we can do that this year, then we will have accomplished monumental work for a better market system, not only in the United States but in the world. That is my objective.

Senator HEINZ. Mr. Chairman, might I just make a brief observation on those comments?

Chairman GIBBONS. Sure.

Senator HEINZ. I think you have your priorities right, and I think you also raised the issue of, where does legislation of this type fit philosophically into concerns about unfair trading practices. You have returned from Japan. You have noticed their policy of targeting down, as you say. And that targeting is particularly significant for our growth industries, our high tech industries, as some people say.

And this legislation does not address those kinds of problems. It is not meant to. It is not cut out to do that. What you are trying to do is address, if you will, another kind of problem of the future, which is how we deal with threats to our emerging industries so that they can continue to emerge.

This legislation I suppose conceptually deals with the reality that other industries on other occasions have been the recipient of the same kinds of attention, targeting down by the Japanese and others, at earlier points in history, and that we have by and large not always done the best job of developing strategies of survival or adjustment.

And what this legislation attempts to do conceptually is to help our industries that have suffered—many of them have suffered from unfair trading practices, subsidies, targeting, and a variety of things. But our laws up until 1979, frankly, as I am sure the Chairman knows, were not very effective in that regard.

This legislation does not seek any financing from the Government. Indeed, the legislation grows out of my thinking about some legislation which I opposed, which I voted against, and if I had to do it all over again I would still vote against it and oppose it.

I see Guy Vander Jagt over there from Michigan. That was the Chrysler bailout. I voted against the Chrysler bailout for two reasons: First, there was a Government allocation of money, a loan guarantee to an individual firm. I thought it was wrong for the Government to put up money for an industry or a firm, and I thought it was wrong to pass legislation benefiting a particular firm.

I watched rather carefully the progress of the Chrysler legislation, and one thing I will say for it is it has worked. It worked, however, not because we gave Chrysler money, but because as a condition of giving Chrysler financial assistance the Congress, the House and the Senate, imposed a series of conditions on Chrysler, including labor contract give-ups, management give-ups, product development, investment, the seeking of new capital from the dealers, and a variety of other orders to labor, management, their creditors, the banks, their customers, their dealers, to set their house in order. Otherwise they were not going to get any help under that legislation.

Now, we did not give them much choice. What we really did conceptually is, we told them, here is what you have to do to get your house in order. If you do not really adjust, you do not get anything.

What I am suggesting here for industries that I think by and large have been at one point or another partially the victim of a lot of unfair competition—not only victimized by that by any means—is to say to them: You know, you have a chance of getting a breathing period consistent with the GATT, with 201, but by golly, you've got to get your house in order. You have got to work it out, and we will simply say no to you until you come up with a plan that really works.

That is the idea here. That is where it comes from. And I have tried to steer very consciously away from Government financial support or from anything that smacks of central planning. This is a self-help remedy. It only takes place when there is an initiative on the part of the industry, both labor and management, that really wants to get its act together.

I apologize for being so long-winded, Mr. Chairman. I thought you might want to get the background to it.

Chairman GIBBONS. I appreciate the background and the flavor of your message, and it is a very interesting concept. And I am glad that you recognize that it is one that we would have to very closely examine to make sure that we did not have some unintended mistakes or results from it.

But you know, it is not a bad concept, Senator. It is a good concept.

Mr. Schulze?

Mr. **Schulze**. Thank you, Mr. Chairman.

I would like to thank my colleague in the Senate for a very interesting statement. John, I agree with I guess 99.9 percent of everything you have said, and I think that we have got to move in that direction, both of the directions you have outlined.

And I guess, rather than any questions, I can state that I will stand ready to assist in any way over on this side that I can.

Senator **Heinz**. I thank my friend and colleague from Pennsylvania.

Mr. **Frenzel**. Would the gentleman yield?

Mr. **Schulze**. I would be happy to yield.

Mr. **Frenzel**. The gentleman is much too modest. He has already been carrying his weight on the nonmarket problem over here for some time. We have relied on his—

Senator **Heinz**. That is the first time I have ever heard Congressman Frenzel accuse anybody of being much too modest.

Mr. **Frenzel**. Well, as difficult as it is for me to analyze that trait, perhaps I can perceive it in others.

Mr. **Schulze**. I might also say that as long as we keep this pot stirring, we are getting some—we have to keep an active interest in the issue. We are making advances, whether we are getting anywhere or not. But I still think it is having an impact. I congratulate you.

Chairman **Gibbons**. Mr. Conable?

Mr. **Conable**. Thank you.

Chairman **Gibbons**. Mr. Pease?

Mr. **Pease**. Thank you, Mr. Chairman.

I would like to commend Senator Heinz for excellent testimony and some good ideas. I hope those ideas come to some flowering here one of these years.

I went on a trip to Japan, too, and it appears to me that we are up against some stiff competition from Japan and, beyond Japan, from Korea, Taiwan, Malaysia, Singapore and other nations. They have more central planning than we do. They do not blanch at government subsidies the way we do.

It has occurred to me that we may not be able to compete against that kind of competition. I do not know. But your bill, it seems to me, within the limitations of our traditional system, is a very good, imaginative approach. It holds about as much promise as anything I have seen for success within the limitations of our own economic framework. I commend you for that.

I would like to ask you just a couple of questions about specifics. Who in your concept would represent the Government in this three-party discussion of what an industry is going to do to put its house in order?

Senator **Heinz**. Well, the way I have written the bill, the Commerce Department and the Labor Department or, if it was an agriculturally related industry, the Department of Agriculture would be representing the Government as part of the tripartite committee that would develop and presumably eventually get to an acceptable adjustment plan.

Do you have any suggestions on how to make that system work better?

I will tell you where the idea for that came from, just so there are no secrets. As you know, our steel industry continually gets itself between a rock and a hard place, sometimes for reasons of its own, sometimes for reasons extraneous to it. And back in 1977 there was a White House conference on steel. Out of that was appointed a group under Tony Solomon.

The Solomon commission developed among other recommendations a tripartite committee to look at the particular problems of this industry, to come up with a number of things they thought at least Government ought to do, and the tripartite approach appeared to do a fairly decent job of identifying problems and developing acceptable solutions to them.

Mr. **Pease**. I do not have any ideas other than that, but I think it is a point that needs a lot of consideration. It appears to me that the Government, among the three partners, would be perhaps the key actor. You know, there is a tendency on the part of labor and management in some industries to pat each other on the back and go down the route of least resistance.

I think your analogy of the Chrysler Corp. was very apt. The Government required some tough steps to be taken by Chrysler Corp., and I think it is going to be required in some other industries as well.

I am just wondering, from a mechanical point of view, who is going to sign off on the part of the Government and say, yes, these steps are sufficient to meet the needs? Will it be an Under Secretary or Secretary of Labor or Commerce, or will the President have to get into the act? How will that be done?

Senator **Heinz**. It would be my intention that—or it would be my prediction that what you are going to end up with is an interagency review process here that, like the present process on any 201 case, such as the *Harley-Davidson* case that was mentioned earlier, operates by the process of consensus.

That means, practically speaking, that although one or two Departments of Government might take a lead role, Commerce and Labor, for example, in the case of the steel industry or an auto industry kind of situation, there would be an interagency review process which would have USTR, Treasury, State, all the normal players that are part of the review process.

And because that process operates by consensus, what that really means is that if any one of those people have very strong objections or do not think that the plan will do the job, they say no and continue to say no until the problem becomes an acceptable plan. Or if they think under any circumstances that there is no such thing as a good plan, or because there are foreign policy considerations, that a trade war might result, they never have to say yes, and the whole process ends with no result.

And I must tell you, I think one of the more important roles for industries that really have lost their competitive edge is for the Government representative or representatives to say no until a viable adjustment plan has been developed.

Mr. **Pease**. Were you using that as an example? Would you think that in the situation envisioned by your bill that there would be an interagency task force involving State and the ITC and USTR?

Senator **Heinz**. Well, that is the way it works.

Mr. **Pease**. I know it works now for remedies and for injury. I guess the thing that concerns me is, we have heard testimony just in recent weeks that too often decisions are made in that collegial atmosphere on political or foreign policy grounds, rather than on trade grounds. It seems to me that in particular what must be done is to pick up an industry by the ears and say, this is what you need to do. The expertise has to be in terms of industrial management rather than in foreign policy or trade negotiations.

Senator **Heinz**. Well, the reason, of course, in this draft of the bill that I have assigned the lead to Commerce and Labor is for that very reason. But since the kinds of problems that we are addressing here, are not directly linked to current unfair trade practice allegations, where in my judgment foreign policy considerations are definitely secondary, I must confess that I think we have to be realistic and understand that there are times when we cannot take actions, industrial actions, in a total vacuum with respect to international financial conditions or international trade negotiations.

So I too have had some concerns about the way under the normal 201 process the interagency review process sometimes seem to be sound and fury, signifying nothing, and you get a very ineffective import remedy. But then again, the industry was never able to tell anybody what they were going to do if they got either an effective or an ineffective protection from a slew of imports.

So I think this is probably one area that will need to be explored in greater depth, and I hope that the administration will give me their views, give us their views, on how we can best do this. There needs to be balance, and I would not at this point be willing just to say, I am sorry, it does not make any difference what USTR or Treasury or State think.

Given today, for example, the rather tenuous state of many of the newly industrializing countries—Mexico and Brazil I put into that category—the LDC's that need the International Monetary Fund assistance and conditionality, I think one would want to act with some care on occasion in this area.

Mr. **Pease**. Well, I appreciate that. And again, without belaboring it—I know there are other members that might want to ask questions—I just think you've got the kernel of a fine idea here. It is consistent with our traditions. It is consistent with the philosophy of this administration, I think. And I hope that it can be pursued both in the Senate as well as here in the House.

Senator **Heinz**. Congressman Pease, thank you very much. I appreciate your warm reception to the idea. I appreciate the reception. I understand it is not a full embrace, because I know that at this particular date it needs a little checking out.

Mr. **Pease**. Well, if you need some help in pursuing the idea in the House, let me know.

Senator **Heinz**. Thank you. I do.

Chairman **Gibbons**. Mr. Frenzel?

Mr. **Frenzel**. Thank you, Mr. Chairman.

I want to thank the Senator for classing up our hearing room today.

With respect to the nonmarket proposal, it seems to me that we have not encountered a lot of problems in the last couple of years, have we?

Senator **Heinz**. Well, the one that comes most directly to mind, and it is an old case, is the famous *Polish golfcart* case, and it was somewhat hard, in that case, to really make an intelligent decision under current law because, although the Poles would tell you what in zlotys the prices of their various inputs were, since they have a variety of different exchange rates, you could not really come to a meaningful value because they would not tell you what the applicable exchange rate was.

Mr. **Frenzel**. I agree with you, but that was a case in the early seventies. I went through the factory. It was a subline on an airplane factory and they just assumed they had no expense other than the materials. They were going to pay the guys—it was really hard to tell on that one, I would agree with you.

Senator **Heinz**. That is correct.

Now, I cannot come before you and say that there has been a long line of people who have petitioned. There have been cases that have been poorly decided. My feeling is that there are relatively few people coming forward to petition because they do not think it is worth the effort to do so, given the relative difficulty of operating under current law.

I will try to provide for you—certainly I do not happen to have one with me—the most recent list of cases. It is certainly a valid question, but I would suggest, as we have noted on many occasions with both 201 and 301 cases, the latter being discriminately trading practices, that people can get discouraged about the operation of the law and sometimes just will not bother to file.

Mr. **Frenzel**. I think that is true. But really, your other proposition is much more interesting. I am not thrilled about getting into 201 this year, nor am I thrilled about changing the relationships that exist now to remedies.

On the other hand, the second part of your proposal is solid gold and it should be part of the ITC recommendations right now. Any time we give anybody any special relief or protection, we ought to make sure that that entity has got some sort of a plan.

You know, the free traders always sit around and say, once you give somebody the crutch of protectionism it is another year and they want a second crutch, and then they want a wheelchair and then they want an iron lung. But if you structure a plan to make them get off the crutch, then I think it is a whole heck of a lot easier to sell changes in these relief mechanisms.

You indicate that this is just a beginning and a probe. I think you have made a damned good start. I appreciate the work you have done.

Senator **Heinz**. I thank my friend from Minnesota.

If I might make an observation or two.

Mr. **Frenzel**. Please do.

Senator **Heinz**. Let me tell you that one of my other motivations for trying to think a little harder on this problem is that, coming from a State with a very sick group of import-beleaguered industries, steel among them, believe you me, it becomes an annual exercise in frustration trying to fight all the fires that continually blaze up without any prospect of fireproofing the building, the block, or the city, if you understand my meaning.

There is always a new problem springing up where you thought that some kind of solution had been arrived at, where ultimately there is an insufficient amount of genuine adjustment taking place.

Now, as I understood your comment, you have a very modest amount of enthusiasm for changing the 201 standards of causation and injury. I understand that. I would only observe that right now our standard for causation is "significant cause"—excuse me, "substantial cause"; and our standard of injury is "serious injury." I, as you know, proposed in the legislation to modify those thresholds to "contribute importantly" in the case of causation and to make it "material injury" in the case of injury, which is our dumping and countervailing duty standard in the latter case.

The philosophical rationale for that is this. Under current law you practically have to say that imports are our only problem. That is what "substantial cause" tends to mean. It is why the auto industry, in part, was unable to get relief from 201 when it applied in 1979-80. When you force an industry to come forward and say, imports are the only cause, the consequence is that they tend to say—and maybe the local content bill is a symptom of such—that doing something about imports is the only solution.

And obviously, you and I, I think, understand that that is rarely, if ever, the case. There are many causes and therefore there need to be a wider range of solutions than just standing on imports and all the problems attendant thereto.

That is the philosophical rationale for the change in the thresholds. They are certainly worthy of serious consideration in terms of what you do with them. I do not mean that you have to accept my proposition. I mean that you are asking the right question.

There is one other consideration, and that is this. If you agree with the latter part—and I thank you for saying so—is solid gold, the adjustment requirements, it seems to me that you want to do something to provide an incentive to get industries to participate. You need some kind of—something to make it more attractive. The lowering of the standard quite consciously is meant to be the carrot which one uses in order to get the industry, if you will, to take a stick to itself.

And I am not quite sure, although maybe I would be indebted to you for any suggestions in this regard, I am not quite sure how you would provide the carrot without in some way modifying these thresholds as I have proposed.

But Mr. Chairman, if I may say to Congressman Frenzel, if he has some ideas in this area, or any of you, I certainly would welcome them.

Mr. **Frenzel**. I have the feeling that after the *Kawasaki* case the ITC may have preceded you in lowering the standard of cause.

I have just one other comment, and that is that we have tried in the case of trade adjustment assistance for firms to do something, as you are trying to do in the 201 section. There have been some successes, I think, but my cursory study of them is that they are more accidental than premeditated.

And the end of this caveat is that the Department of Commerce has been a bigger part of the problem than a part of the solution. And as you draft the bill, they would not be my first choice to insert into the equation.

Senator HEINZ. Is there anybody else you would prefer?

Mr. FRENZEL. Well, you and me, John. We are the most modest.

Senator HEINZ. No comment, only I do not think it would be credible.

We had a hearing in the Finance Committee on both the worker and firm adjustment assistance programs. There really are two phases to the latter program as far as I can see. There was one essentially under the Carter administration, where they tried to put out a lot of loans, loan guarantees, and those loans and loan guarantees came up well short of anything that you and I would consider substantial success.

In the interim, what they have done in the last 2 years—oh, by the way, the administration wants to end the program—they have not put out much money as loans, loan guarantees, or financial support, and they have really limited themselves to consulting. And in that regard, where they are just giving advice, they seem to be a good deal more successful than they were when they were giving out money.

I suspect that, and I cannot prove it, I do not know the facts, that there was a lot of politicization of the giving out of money, and I suspect—and I do not mean this as a partisan observation, but I suspect that Republicans as well as Democratic Members of Congress, not that anybody here, of course, except maybe people on this side of the table, were in there urging the Commerce Department to approve such and such a loan or a loan guarantee to such and such a constituent.

I suspect that had a lot to do with the problems in that loan guarantee program, Bill.

Mr. FRENZEL. I think you are right.

Anyway, thank you for your testimony, and I for one consider it most helpful.

Chairman GIBBONS. Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I am happy to welcome our colleague and my friend in the other body. He remains my friend in spite of his position on the Chrysler bailout legislation.

Senator HEINZ. I was afraid you were going to bring up chipper knives.

Mr. VANDER JAGT. I was going to save that for later.

I was happy to note and observe that you do, though, in observing the Chrysler legislation, conclude that it is working.

On a more serious note, I do want to commend——

Senator HEINZ. Mr. Chairman, just let me say, yes, I think the legislation has been successful for Chrysler, notably so. That is quite right. It does not mean I would support it today, but it has been successful.

Mr. VANDER JAGT. I think it is interesting how your own idea flows out of your analysis of that. And I join with everybody else in commending you for what I think is a very provocative, a very interesting idea, and very, very well presented.

Thank you very much.

Senator HEINZ. I thank you, Guy.

Chairman GIBBONS. Thank you, Senator. We appreciate very much your coming and we look forward to further dialog.

Senator HEINZ. Mr. Chairman, thank you very much. We look forward to the successful completion, not only of the hearings but of your markup.

Chairman GIBBONS. Our next witness is from the semiconductor industry, Mr. Alan William Wolff, who is the counsel. Everyone on this committee is familiar with the great contributions that Mr. Wolff in his role as Ambassador, Assistant U.S. Trade Representative, has made to the functioning of our international and our national trading system.

Mr. Wolff, we recognize you as an expert and we welcome you here as a friend.

STATEMENT OF ALAN WOLFF, COUNSEL, SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. WOLFF. Thank you very much, Mr. Chairman. I appreciate the opportunity to testify on behalf of the Semiconductor Industry Association. SIA represents the majority of U.S. merchant and captive producers of semiconductors in matters of trade and Government policy.

From my experience over several administrations in the writing of trade laws, and now from the viewpoint of a private law practitioner, it is my observation that there is a strong need for reform in these laws. The current laws are inadequate to the challenges now being posed to U.S. industries.

Our Government stands alone in the community of nations in the degree of ignorance of the competitive challenges that its industries face in the international marketplace. The U.S. Government has a very different role in agriculture, and that partnership has been a very successful one.

Unfortunately, our trading partners do not share our laissez faire policy with respect to industry. While Japan is often cited as a prime example of a country driven by an industrial strategy, this is the direction increasingly being chosen by a number of other countries, including developed and developing alike.

International competition in semiconductors provide an example, perhaps the clearest example, of industrial targeting. The Japanese Government established as a national economic goal in the 1970's, the attainment of a preeminence in the knowledge-intensive industries: computers, data processing, communications, robotics, and electrical machinery, including semiconductors.

The general pattern of the strategy is to identify an industry, protect it, identify a few high-volume product lines in which to specialize, make large investments in advanced production equipment, launch an entering wedge export drive characterized by extremely aggressive pricing, and, once that beachhead is established, to expand the range of products being offered.

There is nothing mysterious about industrial targeting. We concentrate national resources in particular areas in the space program, in military hardware. The Japanese and others are increasingly taking the same approach with respect to commercial applications, commercial exploitation.

Last month Mr. Lidow testified before this committee on the nature of industrial targeting in semiconductors. I will not go through that story in great detail. I would just say that the Japanese formed a cartel, decided to move ahead in semiconductor technology, and they developed a product called the 64K RAM, the 64,000 bit memory, through subsidies, through joint research and development.

And when free market firms compete against an industrial combine of that sort, the tendency is for Americans to disinvest. There are now only five American producers of 64K RAM's, compared to the 12 to 15 that participated in earlier generations of products. The Japanese Government has reduced the risks for its firms and increased the risks for ours.

Current U.S. trade remedies are not designed to deal with this kind of problem. Import relief is really designed to give a breathing space. I must say that if it were redesigned along the lines of Senator Heinz' proposal, it would be somewhat different. But even so, it is a temporary relief measure, and where one is facing Government competition it will not be possible for an individual firm to adjust, other than by going out of the industry, to competition backed by foreign governments.

Similarly by and large, the countervailing duty law is currently ineffective. The amount of the countervailing duty bears no necessary relationship to the real world effects of a subsidy.

The VLSI—very large-scale integrated circuit—project received $182 million in direct aid from the Japanese Government. If one assessed a countervailing duty on the products that resulted from the technologies developed, these would be very small indeed. Countervailing is not an effective remedy.

The antidumping law is similarly ineffective. It is very difficult to establish the appropriate allocation of research and development to individual product lines. Moreover, since production costs decline very rapidly in this industry, it is difficult to estimate actual cost recovery over the product's life cycle before this has been completed.

Chairman GIBBONS. Let me interrupt you here. We have a complicated amendment up on the floor right now and I do not know—we will probably have a little learning time when we get over there, so we better go over there and start looking at it. We will be right back. We have to go vote.

[Brief recess.]

Chairman GIBBONS. All right, let us resume, please, sir.

Mr. WOLFF. Thank you. I will not start at the beginning.

Chairman GIBBONS. Start wherever you wish.

Mr. WOLFF. I had just addressed myself to the inadequacy of countervailing duties and antidumping duties as responses to industrial targeting.

Section 301 also has shortcomings, although in terms of its drafting, as you have noted, it is very broad. The GATT rules also might offer some remedy, but the possibility of remedy is quite different than the probability of remedy. And to receive a remedy in a 301 case, one has to convince the U.S. Government of the need to act, and it is really an article of faith in many areas of the U.S. Government that industrial targeting really does not exist, and if it did exist it really could not be as effective as American business and labor says it is, and if it were effective, in any event if we tried to intervene, we would only make matters worse.

So to try to get a 301 case through the Government is just extraordinary difficult.

The prescription that we would recommend, Mr. Chairman, the things that the Congress could do now would be: First, to build in the U.S. Government a sectoral analytical capability, an understanding of our industries, so that it is possible to anticipate problems, so when they arise there is something that can be done about them.

Mr. Frenzel and Senator Heinz just reached substantial agreement on the need for an adjustment plan in the context of a 201 case. Clearly, the Government, to play any role in that process, has to have an understanding of the competitive strengths and weaknesses of the industries that are being examined. And we just do not have the resources currently.

Second, there is the question of the burden of proceeding. Right now the petitioner really has to do the investigative work for the U.S. Government in these broader trade cases. Under section 301 and similarly broad remedies, there is no investigative capability. To my knowledge, in the machine tool case, which has received a very large amount of publicity, no U.S Government investigative team has gone to Japan to examine the facts for the Government, there has been no detailed examination, or maybe even no summary examination, of the competitive strengths and weaknesses of the American industry.

How can an intelligent decision be made on a matter of this importance without some substantive knowledge about this industry within the executive branch? We would thus recommend that there would be some investigative resources created and that where the complaint is based on a complicated web of foreign government policies and industrial behavior, more of the burden would be able to fall on the Government to ferret out the facts.

Third is the question of discretion. It is going to be difficult to define with precision what practices are actionable in order to provide any sort of automatic countermeasures. That is not true with respect to, for example, some subsidies or dumping issues that might be part of industrial targeting or the results of industrial targeting. But it would not be possible to have a definition in advance and require an automatic specified action with respect to targeting in general. One could require some form of reaction, however.

Fourth, the relief provided. Import protection is not the only thing that is required. I think that a number of the witnesses today and in the last session of this committee on this subject made the same point. We have our export industries to consider. We have to be able to open foreign markets. We also cannot reach a number of the practices that are involved.

It should be possible to envisage the negotiation of settlements to offset the adverse effects of foreign industrial policy. The Shannon bill, H.R. 1052, of which you, Mr. Chairman, are a cosponsor, does offer that authority, and I would hope that in the context of dealing with questions of industrial targeting the committee would review the High Technology Trade Act of 1983 and see what could be more broadly applicable to other areas or sectors.

The Jones bill, H.R. 1571, which it seems to me we used to call the Frenzel bill, and also the Danforth bill in substance also contain provisions in section 3 which would enhance the ability of the Government to analyze factors which significantly affect the competitiveness of American industries. It also provides a means under section 301 of sending legislation to Congress on a fast track, which would allow the President to recommend other remedies, perhaps in terms of domestic policies where that could be helpful.

I would note that the semiconductor industry does not seek to close or protect the U.S. market. Our objective has been and remains to open the Japanese market and other foreign markets and to mitigate the effects of foreign industrial policies.

Representative Stark has introduced a bill, H.R. 1953, which we support, which would suspend the duty on semiconductors. We believe Japan would follow suit and that we would have substantially greater openness in semiconductor trade, which would be in the interest of our industry and in the interest of our customers.

In conclusion, Mr. Chairman, fundamentally what we need is a change in national attitude, backing our industries in international competitiveness, understanding their problems, creating the means by which Government and industry can cooperate in a less adversarial manner, a new pragmatism, dropping the ideology that keeps us from reaching sensible solutions when we run into major problems in international trade.

Unfortunately, it is unlikely that this kind of change will come about absent some legislation.

The trade remedies will have to be changed, amended, in order to make them more effective, because I doubt if a sweeping change in attitude is likely to occur very quickly within the executive branch. New legislation will be required that puts less of a burden of proof on the petitioner and gives U.S. businesses faced with major research and investment decisions greater assurance of an adequate American response, both in terms of trade remedies and domestic measures.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF ALAN WM. WOLFF, THE SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. Chairman, I am Alan Wm. Wolff, a partner in the law firm of Verner, Liipfert, Bernhard and McPherson, Chartered, and counsel to the Semiconductor Industry Association (SIA). SIA represents the majority of U.S. merchant and captive producers of semiconductors in matters of trade and government policy.

As one who has been involved in the administration and writing of U.S. trade laws for a number of years, and observed the difficulties inherent in applying those laws to the increasingly serious trade problems faced by U.S. industries, I believe that there is a need for reform of those laws. Current U.S. trade laws are inadequate to the challenges now being posed to U.S. industries by foreign industrial policies. This is becoming a particularly serious problem for the high technology industries.

AMERICA'S INDUSTRIAL POLICY

Corporate executives rarely discuss their businesses with trade policy officials -- unless they are losing sales to foreign competition. On these occasions, government officials are sympathetic but skeptical. They try to identify practices clearly designated as actionable under our trade laws. Very little interest is taken in restoring or enhancing the international competitiveness of the American industry.

It surprises American businessmen that U.S. officials do not as a matter of official policy care whether their industries continue to exist. The government is largely ignorant about their industries and their competitive problems. Often, even after the problems are clearly identified, getting the government to effectuate a remedy is an uphill battle.

The U.S. government has a very different role in agriculture, where it plans production levels, subsidizes exports and works with farmers to develop markets at home and abroad. Agricultural production and trade are rarely free of government involvement in any country. This cooperation of government and agribusiness is essential for success in world markets.

The contrast between agriculture and industry is the more remarkable when one considers that the major breakthroughs in agricultural research have been funded by our government. When it comes to industry, however, federal agencies appear reluctant to fund research if it is likely to lead to immediate commercial applications.

The degree of government-industry cooperation in other countries has not been adequately recognized in America. For high technology industries, a laissez faire policy is becoming the exception rather than the rule abroad, much as has been the case with respect to major basic industries. While Japan is often cited as a prime example of a country driven by an industrial strategy, this is also the direction being chosen by many nations, including France, Germany, and a series of developing countries -- most notably Brazil, Mexico and Korea. Individual firms may not be equal to the competitive challenge posed by these foreign government-industry combinations.

THE NATURE OF INDUSTRIAL TARGETING

Japanese producers are now succeeding against their American competitors in key semiconductor product areas -- despite the fact that the Americans were there first, and are credited with almost all of the major innovations in semiconductor technology over the past two decades. SIA has submitted to your Committee its study of international competition in semiconductors entitled The Effect of Government Targeting on World Semiconductor Competition. The study examines the causes of this reversal of position. Japan's success was not due to commercial competition operating in a free market. It was largely a result of Japan's industrial policy.

The Japanese strategy of industrial targeting has been experienced to varying degrees in several industries -- steel, shipbuilding, heavy machinery, petrochemicals, and consumer electronics. During the mid-1970s, the Japanese government established as a national economic goal the attainment of preeminence in the knowledge-intensive industries-computers, data processing, communications, robotics, and electrical machinery.

The general pattern of the strategy is to (1) establish an industry in a protected home market, (2) identify a few high volume product lines in which to specialize, (3) make large investments in advanced production equipment, (4) launch an "entering wedge" export drive characterized by extremely aggressive pricing to dominate a particular commodity, and, (5) once this beachhead is established, expand the range of products offered to obtain a commanding position in the market.

This is a sound strategy. It is not explicitly prohibited under either international trade agreements or domestic U.S. law. It is this target industry strategy which was applied to semiconductors. The experience in the area of semiconductors has been explored in detail with you this morning by Mr. Scalise.

JAPAN'S SEMICONDUCTOR STRATEGY

In 1971, the Japanese Diet enacted special legislation authorizing the Japanese Ministry of International Trade and Industry (MITI) to develop a detailed "elevation" plan for promoting strategic industries, including computers and semiconductors. This legislation authorized MITI to exempt these targeted industries from Japan's anti-monopoly laws.

In early 1972, MITI directed the formation of a cartel to share production, reduce costs, "prevent excessive competition" and stabilize price with respect to specified types of integrated circuits. At the same time, MITI encouraged "tie-ups" between leading producers -- the six largest Japanese computer firms were organized into groups for the purpose of designing a superior computer system. This early effort failed. A new generation of IBM computers based on large scale integrated circuits leapfrogged the Japanese technology.

Japan's response was to found a new government-industry project to develop very large scale integrated circuits (VLSI) as the basis for a new computer system. The results were dramatic. Over 1000 patentable technologies were developed. Basic research findings were diffused rapidly for application by the participating companies. Avoiding duplicative research freed company funds for financing expansion of capacity.

The financial backing for this effort came largely in the form of interest-free conditional government loans ($132 million from 1976 to 1979) which appear never to have been repaid, substantial tax benefits and Japan Development Bank loans at favorable interest rates. Official assistance also acted as a signal to Japanese commercial banks to support these favored companies and projects.

The Japanese market was officially protected against imported semiconductors until 1974 through quotas, prior approval requirements, and restrictions on foreign investment. Official restrictions have since given way to a market structure resistant to both imports and the establishment of foreign-owned manufacturing operations.

Investment in Japan is still a slow and difficult process. Semiconductor import penetration has not increased significantly since the market was formally opened a decade ago. The largest Japanese semiconductor consumers arelso producers of semiconductors. They strongly favor trading with each other, preserving long-standing relationships. This is an industrial structure that the Japanese government helped to create.

This is not to say that there is no competition within the Japanese semiconductor industry. On the contrary, the major producers vie with each other for market share and government favor. The effect of the conditional loans, repayable only if a company is profitable, is to reinforce the drive for market share first and profits second. Capacity is built up even in recession.

The impact on the marketplace and on competitors abroad is severe. In 1981, Japanese firms led computer memory chip prices in a dramatic decline, causing substantial losses for American firms. U.S. firms began to "disinvest." Although 12 to 15 U.S. firms participated in prior random access memory (RAM) generations, only five are now in commercial production of the 64,000 bit (64K) RAM. The Japanese government -- by very substantially reducing risks to its firms of pursuing a highly aggressive market strategy -- has vastly increased the risks to their competitors.

The net result of the Japanese program has been a rapid competitive reversal. When the VLSI Project began, Japanese firms lagged behind U.S. firms in the leading memory product line, the 16K RAM. The VLSI Project propelled six Japanese firms into a clear leadership position in the next generation product, the 64K RAM. In the competition to commercialize the latest generation product, the 256K RAM, the Japanese are reportedly even further ahead.

CURRENT REMEDIES

There are three basic categories of American trade remedies. The first -- import relief -- is designed to deal with temporary but serious dislocations caused by imports. Import relief is unlikely to be an effective response to foreign industrial strategies because it is assumed that the domestic industry can respond effectively given a short respite from foreign competition. With targeting, however, this self-adjustment process cannot succeed, individual firms being unequal to their foreign government-backed competitors. Moreover, an industry must be immediately threatened with serious injury. In a high growth industry, this test is hard to apply in traditional terms of unemployment and closed plants. What is being lost are the jobs never created.

The next category of remedies consists of highly specialized devices tailored to offset specific foreign practices. Countervailing duties can be imposed to offset foreign subsidies paid on the manufacture or export of particular goods if the industry can show that it has been "materially injured." By and large the countervailing duty law is not an effective means of countering foreign industrial strategies. The amount of the countervailing duty imposed bears no necessary relationship to the real-world business effects of a subsidy. Direct government aid is only part of the financial benefit accorded by the targeting process.

The major benefit of a government-supported joint R&D effort like the VLSI Project may be to make possible a new generation of products. A countervailing duty calculated to offset the seed money needed to establish an industry-wide project might amount to only a few percent of an individual memory chip's value. Furthermore, because of the collaborative nature of these programs, the value of government subsidies (and industry matching funds) is multiplied. Participating firms receive technology for which they would have to pay many times as much if they proceeded on their own -- as U.S. firms must do. Imposition of a countervailing duty pegged to the actual amount of the subsidy would clearly be an ineffective means of restoring market conditions of competition.

The antidumping law offers relief where material injury is caused by "sales at less than fair value." Where a product is sold for export at the same price as it is sold for domestic consumption, as a general matter no "dumping margin" exists. The major exception to this rule is where sales in the foreign home market are at less than the cost of production. In these circumstances, the dumping margin is determined by reference to a constructed value (costs, general expenses and a required profit margin).

Given the fact that American producers of semiconductors are highly efficient, and Japanese companies have in the past relied on American production equipment, it should be relatively easy to show that when the Japanese sell high density memory devices well below the U.S. cost of production, they are dumping. This is not the case, however. It is very difficult to establish the appropriate allocation of research and development costs to a particular product line. Moreover since costs of production decline as learning curve efficiencies are obtained, the average cost of a product can be very difficult to estimate before the product life cycle has run its course.

The third category is of remedies generally linked to international agreements, particularly the General Agreements on Tariffs and Trade (GATT). The principal means of gaining access to these remedies is through section 301 of the Trade Act of 1974. Petitions may be filed requesting the President to enforce the rights of the United States under any trade agreement; or to respond to any act, policy or practice of a foreign country that (a) is inconsistent with any trade agreement, or (b) is unjustifiable, unreasonable or discriminatory and burdens or restricts United States commerce.

Under the GATT, a signatory can seek a remedy if it considers that any benefit accruing to it directly or indirectly under the agreement is being nullified or impaired. Under the GATT Subsidies Code, countermeasures may be authorized if "a subsidy is being granted or maintained in such a manner as to cause injury, nullification or impairment, or serious prejudice" to another Code signatory.

Clearly the possibility exists of obtaining at least some form of relief under these agreements. Whether they will serve to curb excesses of national industrial strategy remains to be seen, however. One cannot predict with certainty whether a GATT panel of nationals of other countries would view GATT or Subsidies Code obligations in the same light as we would.

The President need not invoke international agreements to respond to foreign industrial policies. He would merely have to conclude that the foreign governmental practices complained of are unreasonable and constitute a burden on American commerce. He would then be authorized to impose duties or other import restrictions on the products of that country which enter the United States.

There is a very substantial difference, however, between the possibility of relief and the probability of relief. The statute is discretionary. The President receives the advice of many agencies before he decides to grant relief. Here lies a substantial obstacle. It is an article of faith firmly held in some quarters of the United States government that the targeting of specific industries by foreign governments does not really exist; and that if it does exist, it cannot be effective; and if it is effective, then in any event, this does not really matter; and if, finally, the United States did intervene in order to provide some kind of a response, it would only worsen matters. Unfortunately, the current weight of opinion in the U.S. government is against any form of action.

CHANGES THE CONGRESS MIGHT MAKE

Knowledge: The government needs to be far more able to understand both the competitive strengths and weaknesses of American industries, as well as being able to understand the effects of foreign government intervention. A formal investigation must be launched if the U.S. International Trade Commission determines that there is "a reasonable indication" that the statutory criteria of material injury will be met. To do this the government will need a much stronger sectoral analytical capability. There must be adequate resources within the U.S. Government devoted to understanding both the competitive strengths and disadvantages of American industries as well as being able to understand the government intervention abroad which seriously affects trade and investment flows. Industry and labor will have to provide expert advice. To make this possible, there must be a softening of the adversarial nature of industry-government relations.

The Burden of Proceeding: Under the antidumping and countervailing duty laws, the Secretary of Commerce must commence an investigation if the elements necessary for imposition of the duty are alleged and information is presented which is "reasonably available to the petitioner." Under a Section 301 proceeding, no standards are set as to when it is appropriate for the Trade Representative to initiate an investigation. Few resources are given to him with which to conduct the investigation. Thus the burden lies largely with the petitioner to document and prove his case. Where the complaint is based on a complicated web of foreign governmental policies and industrial behavior, this is no easy undertaking. Government resources must be created and made available to bear a large part of this effort.

Discretion: One defect of current law from the viewpoint of the petitioner is that whether any government action is forthcoming at all is largely a matter of discretion. Where the law is mandatory -- with respect to the imposition of countervailing duties and antidumping duties -- the definitions of what practices are actionable and the countermeasures provided are too limited to be of sufficient value. It would not be possible to devise a statute which was as automatic as countervail or antidumping for countering industrial targeting. One could not define in advance a specific remedy that would be appropriate for all cases. It would be possible, however, to describe in a statute the process of foreign government industrial targeting and to require some form of reaction from the Executive Branch to offset or ameliorate its adverse effects.

It is the unpredictability created by targeting and the absence of any sure remedy that inhibits the investment of U.S. firms faced with this form of competition.

Relief Provided: Section 301 provides primarily that the President may increase import duties or impose quantitative restrictions. This remedy suffers from several defects. One of them is that it only affects imports into the United States market. Furthermore, import restrictions may not always be an appropriate response. While it may provide some leverage to negotiate obtaining access to the foreign market of the country practicing a particular industrial strategy, this is not necessarily the case. The ability to use threats of U.S. import restrictions to affect the behavior of foreign industries competing with U.S. firms in third country markets is even more limited. The present statute should therefore be amended to envision specifically the negotiation of settlements which would offset the adverse effects of a foreign industrial policy.

Another major defect of a narrow trade remedy approach is that no attention is either required or given to steps which the U.S. Government or industry might take to meet the challenge posed by foreign industrial policies. It may be that certain R&D projects will require some government funding. In the right circumstances, this could be a far more positive response than trade restrictions. Problems of capital formation generally may have to be addressed.

We should learn from our trade cases and where shortcomings in other policies are revealed we should take appropriate remedial steps in those areas as well. The imposition of trade remedies alone will not suffice in the long run. Petitions for trade remedies should not be viewed in isolation from other actions which government and industry should consider to enhance U.S. international competitiveness although the existence of broader proposal should not be a necessary precondition for relief. The filing of a case will often point out broader problems that extend far beyond the bounds of an individual petition. Questions will be raised about our "infrastructure". For example, our educational system is growing weak in basic sciences at the secondary education level. At the graduate level we are not training enough electrical engineers. There may be shortcomings in our retraining of skilled workers and professionals as well as in relocation assistance for bringing the workers to areas where new employment is located.

CURRENT LEGISLATIVE INITIATIVES

Two bills are currently pending before the Congress which would effectuate needed improvements in our current trade laws. The High Technology Trade Act of 1983 (H.R. 1052), introduced by Rep. Shannon, is legislation designed specifically to address trade problems which are emerging in the high technology industries. This bill represents a package which would greatly strengthen this country's ability to maintain the competitiveness of its high technology industries in the face of increasingly pervasive foreign government intervention in this sector. In addition, Rep. Jones is sponsoring a bill (H.R. 1571) which addresses the need for trade law reform across a wide range of industry sectors, including high technology and services. Because of its scope, it enjoys a wide backing. The Jones bill contains a distillation of the essential provisions of the Shannon High Technology bill.

The Shannon bill ("the bill") recognizes that the threat to the U.S. high technology industry from foreign competition is largely a result of restrictions on U.S. access to foreign markets and various forms of foreign government intervention. While the U.S. market is open to foreign high technology imports and investment, many foreign industries remain insulated and enjoy a substantial competitive advantage through Government policies and measures.

The bill authorizes the President to negotiate and enter into agreements and to take other action to obtain and preserve maximum openess with respect to international trade and investment in high technology. The degree of openness abroad is measured by looking at factors such as competition in more open markets, structural barriers facing U.S. companies, "national treatment", structural advantages enjoyed by foreign industries, mutual access to joint research, and the extent to which foreign-held U.S. market share was obtained through unfair advantages. (Sections 3 and 7).

International agreements would include commitments to reduce or eliminate tariff and nontariff barriers (including an acceleration of tariff reductions), a "national treatment" commitment, a commitment not to discourage procurement of U.S. high technology products, and other commitments ensuring access for U.S. companies to projects involving financial and scientific cooperation. In order to carry out these assignments, the President may modify tariff treatment, or submit to Congress proposed changes to U.S. laws. (Section 3).

The President is to determine on a continuing basis whether any major nation is not taking substantive action to provide national treatment for U.S. high technology exports and investment. If consultations with such countries fail to rectify the situation, the President is directed to utilize existing authority to obtain redress.

The bill contains a number of monitoring and reporting requirements. Any foreign government measures or industrial policies that distort trade and investment flows and adversely affect the U.S. high technology sector are to be reported to Congress annually by the Secretary of Commerce, working together with the Special Trade Representative and the High Technology Industry Advisory Committee -- a committee of industry representatives established by this legislation. (Section 5). This report is also to outline the steps the Administration is taking, or plans to take, to remedy the effects of sales at less than fair value, subsidization, or other unreasonable practices. If the President determines on the basis of such a report that a foreign country has industrial policies or measures which significantly distort competition to the detriment of a U.S. high technology industry, result in sales below market value in the U.S., or involve subsidies which injure U.S. high technology industries, the President is directed to use his existing authority to obtain the elimination of such practices or to offset their adverse effects. Monitoring of the bill's implementation will be conducted by the Secretary of Commerce, who will report annually to the President, describing trade and investment levels and market conditions. (Section 6).

All of these measures would involve the U.S. government more actively and effectively on behalf of U.S. high technology firms. The bill's emphasis on the negotiation of bilateral agreements designed to mitigate the effects of foreign industrial practices represents a more sophisticated and effective approach than the imposition of trade remedies. The sectoral analytical capability of the government would be significantly enhanced as a result of the monitoring and reporting provisions. The government would be encouraged to address trade problems in the high technology area more comprehensively.

The Jones bill, H.R. 1571, incorporates a number of essential aspects of the High Technology Trade Act in addition to providing for more general improvements in existing U.S. trade laws. As in the Shannon bill, the U.S. government is given a negotiating mandate to seek the elimination of barriers to U.S. exports and investment in high technology sectors, and the amelioration of the market distorting effects of foreign industrial policies on

U.S. high technology firms (Section 5). In addition, the United States Trade Representative is directed to report to Congress analyzing factors which significantly affect the competitiveness of U.S. high technology industries (Section 3). Furthermore, Section 301 of the Trade Act of 1974 is strengthened to give the President a more flexible range of tools with which to exert leverage against foreign countries engaging in market distorting practices, and to direct the President to take into account the impact of any action taken under Section 301 on the national economy, including employment, inflation, industry rationalization, and consumer costs. All of these measures will enhance the government's ability to undertake a more informed, comprehensive and effective response to market distorting foreign practices.

Legislation similar to the Jones bill is pending in the Senate, Senator Danforth's International Trade and Investment Act (S. 144).

I note that SIA does not seek to close or protect the U.S. market, but to open the Japanese market, and other foreign markets, and to mitigate the effects of foreign industrial policies. In fact, SIA is currently supporting a bill sponsored by Rep. Stark, H.R. 1953, which would suspend the duty on semiconductors. Japan has unilaterally suspended its duty on a number of commodities in the recent past. This legislation, if enacted, should serve as an inducement for Japan to take similar action with respect to semiconductors. If Japan really believes in free trade -- as it professes -- it is difficult to see how it can justify a failure to implement a reciprocal duty suspension.

CONCLUSION

The improvement which these bills would make in our trade laws are needed -- and as I have suggested, additional changes are also needed.

Fundamentally, however, what is needed is not just a change in our trade laws, but a change in our national attitude. It has been said by foreign observers that we are a highly litigious people as a result in part of the limited role of government in the United States. This is how we wish it, but the time is ripe for making some changes.

The world economy functions somewhat as the authors of the Federalist Papers envisioned our democracy would. They felt that, given the right checks and balances, individual interest groups should pursue their conflicting objectives. The result would maximize freedom for all and obtain a balance of interests.

Increasingly in a number of sectors, international competition is being shaped by the participation of foreign governments in combination with their firms. This competition is unchecked by international rules. It will remain unbalanced as long as our government remains too embarrassed to promote the commercial interests of its industries.

For a relatively open international trading system to endure, the United States government cannot continue its indifference to the nature of international competition. In a broad sense our industries must compete from a position of equality, taking into account the support that foreign industries receive. This must be accomplished in a manner appropriate to our economic system. In any event, buffering trade measures may be required at the border in some cases. But if no other steps are taken to address the challenge of foreign industrial targeting, trade restrictions will be inevitable.

It would be too optimistic to assume that trade litigation -- the bringing of petitions to which a response must be given -- will soon be replaced by a U.S. government predisposed to trying to solve the problems of international competition posed by industrial targeting. A sweeping change in attitude is not likely to occur quickly within the Executive Branch. Therefore, new legislation will be required that puts less of a burden of proof on the petitioner and gives U.S. business executives faced with major research and investment decisions greater assurance of an adequate American response, both in terms of trade remedies and domestic measures.

H.R. 1571 & H.R. 1052: COMPARISON OF KEY PROVISIONS

Bill #/Title Date Intro.	Sponsor and Co-sponsor as of 3/9/82	Objectives	Negotiating Mandate	Amendment of § 301 Investigation	Monitoring/ Reporting Provisions	Services/ Investment/High Technology
H.R. 1571 Reciprocal Trade and Investment Act of 1983 February 22, 1983	Jones (OK), Conable, Vander Jagt, Schulze, Gibbons, Shannon, Downey, Frenzel	- To expand competitive U.S. exports by achieving substantially equivalent competitive opportunities.	- Adds new negotiating objectives for Section 102 Agreements in the areas of services, investment and high technology.	- Defines the terms unreasonable, unjustifiable and discriminatory. - Expands the range of responses to include proposing fast-track legislation as a 301 remedy.	- Directs the President to prepare national trade estimates which would identify barriers to U.S. trade and investment and estimate their impact.	- Creates a new regime for the coordination and development of U.S. trade policy for services.
S. 144 Trade and Investment Act of 1983 January 26, 1983	Bentsen, Andrews Boren, Bradley, Chafee, Chiles, Cohen, Cranston, D'Amoto, DeConcini, Doyle, Glenn, Grassley, Hart, Heinz, Hollings, Inouye, Kasten, Mattingly, Melcher, Mitchell (ME), Moynihan, Pressler, Proxmire, Randolph, Riegle, Roth, Simpson, Symms, Tsongas, Percy, Cochran, Ford, Helms, Spector, Exon.	- To improve the ability of the President to identify barriers and obtain their elimination. - To encourage the expansion of international trade in services and to enhance the flow of foreign direct investment.	- H.R. 1571 does not include authority to proclaim elimination of duties on computers or semiconductors. (Companion bill — S. 144 in the Senate does include this authority.)	- Alters procedure: (1) Authorizes USTR to initiate an investigation; (2) allows USTR to delay consultations for up to 90 days.	- President reports annually to Congress on the trade-distorting impact of those practices, and any action taken, or the reasons for no action, to eliminate such practices.	- Negotiating objective in the high technology area incorporate principal concepts in H.R. 1052, including (1) obtain and preserve maximum openness, (2) reduce or eliminate all barriers to, and trade distorting effects of, foreign government acts, policies or practices, including foreign industrial policies, denial of national treatment, anticompetitive practices,

H.R. 1571 & H.R. 1052: COMPARISON OF KEY PROVISIONS

Bill #/Title Date Intro.	Sponsor and Co-sponsor as of 3/9/82	Objectives	Negotiating Mandate	Amendment of § 301 Investigation	Monitoring/ Reporting Provisions	Services/ Investment/High Technology
						(3) obtain commitments not to discourage government or private procurement, (4) obtain commitments on access to joint research and (5) protect intellectual property rights.
H.R. 1052 High Technology Trade Act of 1983 January 27, 1983	Shannon, Gibbons, Lundine, Guarini, Beilenson, Edwards (CA), Dymally, Fazio, Matsui, Lantos, Mineta, Boland, Nelson (FL), Moakley, Patterson, Stark, Simon, Pritchard, Market, Jeffords Sunia, Corroda.	- To obtain and preserve maximum openness with respect to international trade in high technology, goods, services, and information and for investment in high technology industries. - To strengthen the international trading system as embodied in the GATT and related agreements.	- Provides new, independent authority for President to negotiate and conclude bilateral and multilateral agreements to achieve the purposes of the act. - Agreements may include commitments not to discourage public or private procurement and to eliminate tariffs, or other barriers, to high technology trade.	- Does not amend Section 301. - Requires President to determine when foreign countries deny national treatment to the detriment of U.S. high technology industries. President to consult and take action under agreements or U.S. law as appropriate.	- Secretary of Commerce analyzes and reports annually to Congress on foreign industrial policies or measures which distort trade and adversely affect U.S. high technology industries. President to take action under U.S. law to obtain elimination of such practices or offset their distorting effects.	- Services and investment covered as they relate to high technology.

Chairman GIBBONS. Thank you, Mr. Wolff. I appreciate the discussion you have just presented and I will read your paper thoroughly. Of course it will be a part of the record.

Let me talk about what we generally categorize as the unfair trade practices. I think you in your paper identified them as a highly specialized device. It would seem to me that under the GATT and under the subsidies code that there is room for us to interpret in our own domestic law, a subsidy as being more than just a cash payment. I think, as you point out on page 7 of your testimony, that direct aid is only a part of the financial benefit accorded by the targeting process.

The targeting process in its full-blown application as I understand it includes not only a public anointment of the industry to be favored, thereby conveying upon it a special benefit, but also conveys upon that industry a special exemption from the domestic antitrust laws generally in the country.

It countenances the formation of a cartel-type of arrangement to carry on research and development and share information. It restrains competitive forces, both within and without the country practicing targeting. It does provide some direct financial incentive, which is usually pretty clearly identified. It shelters and nurtures a developing targeted industry in a sort of a hothouse until it is ready to withstand the rigors of competition, and then it bursts forth in full bloom and with great vigor upon unsuspecting competitors. I should not say unsuspecting competitors, but upon nonprotected competitors.

And therefore, it amounts to sort of a predatory business practice in the sense that I used to learn to identify predatory business practices.

It seems to me that within the General Agreement on Tariffs and Trade and the subsidies code that these are measurable benefits or bounties that we could in effect discourage by placing a countervailing duty upon those practices. I would like to have your response to that.

Mr. WOLFF. Well, what the Japanese did in the case of semiconductors, as you point out, goes beyond direct aid. They granted $132 million in conditionally repayable loans, the condition being that the technology resulted in a profit. Apparently it has not. Prices in the marketplace would tend to bear that out in the 64K RAM, random access memory. There is a direct subsidy element there.

Japan Development Bank loans are below market rate and they require no compensating balances, so that the effective rate is very low indeed. That would be a countervailable——

Chairman GIBBONS. A below market rate loan and a nonrecourse loan are certainly not anything other than subsidies in my definition.

Mr. WOLFF. I would think that would be clear.

It would not be welcomed by our trading partners, but it is certainly something within our law and I believe within the subsidies code. What is a little less clear as a subsidy is the signaling effect—when the Japanese Government, when MITI sits down with the industry and it says that this particular area, naming any of several, that is, robotics, machine tools, or semiconductors, is favored, there tends to be an emphasis in the lending practices of the commercial banking system. This system is really almost equity-holding in effect rather than an arm's length relationship as our system between the financial institutions and the manufacturing sector. There would be a tendency to support those favored or "targeted" industries over other industries.

I spoke a few years ago to a textile manufacturer, the head of a textile company in Japan. He told me how industrial policy had worked in the case of textiles. The industry and Government reached a consensus on phasing down textile production. I asked him "what if you did not want to go along." He said, "I would get no money." He could not raise capital from the banking system if he went against the agreed direction.

So the Japanese banking system is very responsive. That is not necessarily a subsidy in terms of interest rate. It is a practice that increases the availability of capital markedly.

Chairman **Gibbons**. Well, I am not sure that it is not, and let me throw out why I am not sure that it is not. It does not seem to me that the banking system as we recognize it in Japan is really a banking system like we have here. I understand a great percentage of Japanese savings has accumulated in the governmental postal savings system, and then the Government, instead of taking that money into its treasury like we would probably do here, it turns around and puts it directly in banks there.

And I would assume that there is some kind of a quid pro quo for that deposit. Whether we can trace it or not is a matter of proof. But if the XYZ Japanese Co., for instance, gets a loan from a bank and the bank got its money from deposits that were made into the Government savings system operated by the post office, it is probably no mere coincidence that the bank was interested in making that kind of loan.

When you look at the consensus way in which decisions are made in Japan, it would seem to me that it is just an indirect method of the Government making an equity investment in the particular enterprise.

Mr. **Wolff**. In the broadest sense, if you look at the way that the average Japanese worker is living, that economy is subsidizing its export industries.

Chairman **Gibbons**. That is very obvious. I have often thought that one of the strengths of the export industries in Japan is really out of the hides of the Japanese workers and consumers.

Mr. **Wolff**. Well, taking your analysis one step further, you mentioned the relief from redundant research and development by pulling together producers in cooperatives and exempting those companies from the normal operation of antimonopoly laws. There is a benefit. It has been estimated by officials of Japanese companies that in the case of the random access memory, the very large integrated circuit project, that it saved them on the order of four times or five times the amount that they put in directly. So there is an enormous benefit from that.

Whether that would be recognized by the courts currently, without a change in our law, as a countervailable subsidy would be open to some question.

Chairman **Gibbons**. I want to deal carefully with that. I do not want to go outside of the letter or the spirit of the General Agreement on Tariffs and Trade. But I think it is a subsidy, it is a bounty. If it has the result of a bounty, it is a bounty in my definition.

But as I say, these are all ideas that I am exploring and asking the staff to explore.

Mr. **Wolff**. Another area you mentioned is a subsidy due to protected home market. Clearly, that is a subsidy. Whether it is a subsidy in contemplation of the subsidies code that would be actionable under the countervailing duty track, the first track, is another question.

One might want to explore the use of the second track of the code and have some kind of linkage to our law in that regard. In other words, where serious prejudice is caused to our commercial interests due to subsidization, there could be some form of offsetting measures taken against this domestic subsidy.

One might have a linkage to a form of GATT proceeding seeking approval of the GATT, but act in any event if necessary and be willing to suffer the consequences and either pay compensation or find some other adjustment. But, in fact, act.

Your proposals would be very far-reaching.

Chairman **Gibbons**. Before you go into that, let me say that one of the things that worries me about the whole development of an international economic system is, if we fall into the practice of subsidizing a solution to all of our problems, our trade problems, there is no end to the amount of aggressive tactics that we will be forced to. It will be a case of oneupmanship versus oneupmanship versus oneupmanship.

And I do not see that you can ever work your way out of that problem. Civilized nations will just be forced to resort to one method or another, constantly trying to one-up each other on the sophistication of the subsidy, and subsidies in effect will replace ad valorem tariff barriers, which would have been relatively simple to deal with.

So I am trying to go to the very heart and the very core of how a trading system is organized, and as I see it one of the principal things we have got to do is to eliminate the subsidy practice. If we cannot do that, then we might say that we are going to have to resort to the disastrous practice of beginning to subsidize everything one way or another, because that is where we are going to end up.

That is why I think it is a very serious problem and that we need to get on with this and try to solve it. And perhaps this is the appropriate time.

Mr. **Wolff**. I agree with you fully. The United States will have to act to protect its interests. The GATT Ministerial Meeting this last November demonstrated not only a lack of progress, but a lack of an understanding of the need to make progress on the part of our trading partners. It indicated that if we do not look after our own interests others will not come to the table, we will not get the rules we are seeking.

And that was the case in the OECD official export credits arrangement. Until we were willing to show our ability to and willingness to back up the Ex-Im Bank, we could not get an agreement.

One should have no illusions, however. The approach that you are outlining for discussion would be the subject of a very hostile reaction abroad. It would be seen as an attack on the sovereign right of every nation, practically speaking, almost without exception, to concentrate their national resources in a particular area of productive activity in order to gain world market share in that area. And it would not be likely to be something that any GATT panel would sustain. It would be very contentious indeed.

That does not mean it should not be explored, but there will be enormous difficulties abroad. It also does not reach the subject of protecting our export markets, I understand that you realize that and that you have made a plea for taking care of at least some of our problems to begin with and not attacking all of our problems all at once. But if we cannot get into the foreign home market, that means that industrial policy can proceed uninhibited. Protection is absolutely necessary as a part of industrial targeting. I do not think there is a single example of a country engaging in industrial targeting without closing their home market as part of it.

If we want to bring about the influence of market forces, if we want to change others' policies, we have to get through the protective barriers. That is why I think it is absolutely essential that we develop the means to tear away protection abroad as well as protect our home market against industrial tax getting practices.

In many of these commodities there will be global markets. One of the reasons the semiconductor industry is not in favor of protection is because it would make their customers less internationally competitive. It is a no-win situation.

If they protect semiconductors, circuit boards will start coming into the country in greater number with foreign semiconductors. If the protection were extended downstream to that product, then computers and other products incorporating the circuit boards would be subject to those pressures.

Chairman GIBBONS. That makes sense.

Mr. WOLFF. So there is only one choice and that is right now, as they see it, to attempt to get into the protected Japanese home market. There will come a day when they will want to get into the European market, but the Europeans are not as successful as the Japanese today in their targeting of this product area and it is just not as important.

One other point I would make and that is, in this particular area, in the highest technology areas, the result of the Government subsidy can be to create a new product generation ahead of everybody else. So there is no direct relationship between the amount of money put into the project and an offsetting tariff that one could have. What is the benefit of having 64K RAM or 256K RAM, the next generation, 1 year ahead of everybody else? It is enormous. It keeps everybody else out of this market.

So in effect, when other countries say, do not tell us how we should run our domestic economies, I think that we cannot avoid doing so. We have to sit down at the table and discuss what adverse effects their industrial targeting is having on our economy. It is not a matter solely within their sovereignty. It intimately affects world trade.

Chairman GIBBONS. I agree with you.

You mentioned investigative resources and I think you said that in the machine tool industry—the Houdaille case, is that what you were referring to? You doubted that we have actually had any Government investigators on the scene seeing what really happened there. Would you elaborate a little on that?

Mr. WOLFF. Well, it is my understanding that no investigative team has been sent over. There are no resources really dedicated to any great extent to administering 301. If a person in the trade field could still blush, I suppose I would blush, because I was responsible for administering 301 in the early days when it was first enacted.

The resources it seems to me are one attorney and a number of people who will sit around the table and put themselves in the shoes of the President and be willing to opine as to what he ought to do. But as opposed to say countervail or antidumping, where there are about 200 people over at the Department of Commerce—they bring in specialists in particular areas to go over to the country and make an indepth investigation—the administration of that statute has really improved markedly since the 1979 Trade Agreements Act passed—in a 301 case the burden is entirely on the petitioner.

There is no onsite investigation of the foreign practice except what an embassy might provide, which is limited. And also it is not called for under the statute, there is no real investigation of what the effects would be of granting relief: Would it help the industry? Would it cause harm to or would it help other industries within the United States?

Therefore, the ability to make an intelligent decision on a matter as momentous as denying the investment tax credit to machine tools or any one of a number of other cases that have come before the U.S. Trade Representative's Office is very limited. It is not, it seems to me, a healthy way of making decisions.

The situation is analogous to the 201 escape clause kind of problem that Senator Heinz and Mr. Frenzel were talking about a little while ago—making a decision really somewhat in the dark, because one is only looking at whether one is remedying serious injury due to imports and not whether what one is doing is having any positive effect.

I do not think in color television sets or in specialty steel or in the cases that we processed, with perhaps the exception of shoes, that there was a substantial effort made to understand how the relief might be utilized. Well, similarly in 301, there is very little understanding of whether what the administration does will have any particular positive effect in the longer term. One is really getting through a political problem over a couple of years.

We do intervene. We intervene repeatedly. We intervene in steel, we intervene in color TV's and automobiles.

But we intervene with no particular purpose in mind other than getting through the momentary problem, and the momentary problems do not turn out to be as transitory as we would hope.

Chairman GIBBONS. You have made a good point, and it is certainly one that I will seriously consider.

Mr. Frenzel?

Mr. **Frenzel**. Thank you very much, Mr. Chairman. I have enjoyed the testimony, too.

Alan, what should this committee do specifically?

Mr. **Wolff**. Well, the recommendations, the general directions that we have suggested, are first to build up knowledge within the executive branch. The Commerce Department, which I suppose is only partially within the jurisdiction of this committee, is organized primarily to deal with matters on a geographic basis.

The industrial, sectoral, analytical expertise is spotty. It exists in some areas, it does not in others. When we tried to deal with steel and the trigger price mechanism, to find sufficient steel expertise within the U.S. Government was impossible. There was not much, and momentous decisions were being made with very little in-house knowledge.

In agriculture, the contrast is just amazing. You can call over to USDA and they will tell you what is happening in the marketplace, they will tell you what new developments are taking place in new strains of wheat and other products that are being developed. They can tell you about the operation of foreign programs, foreign governmental programs in agriculture.

We just do not have that capability in industry, and yet we are making decisions over intervention in trade. So I think a base in knowledge is very important.

Second, I think there ought to be investigative capability broader than in countervail and antidumping, because I do really think the problems go beyond that; an ability to deal with these problems by adequate staffing.

My feeling with respect to Treasury's administration of the countervail and antidumping laws was that the problems stemmed as much from policy differences, a lack of sympathy for the objectives of those laws, as much as with just a lack of budgetary priority.

If you put few resources into something, you get a predictable result. In color TV's, that case was probably settled because no one knew what the underlying facts were. The investigation had been so mishandled over the course of a decade that it was very difficult to come up with a result that would withstand a court test—that is secondhand. I was not involved in the administration of it, but that is my understanding.

In a 301 case there is no reason to believe that a single attorney, even highly skilled and donated by this committee to the executive branch, was going to be able to handle a dozen 301 cases adequately. So on the broad causes of action I think we need investigative resources.

Third—something is needed that will help with the burden of proceeding. Right now the U.S. Government feels that any industry that come in to complain about something is doing something wrong. There is enormous resistance to trying to be of assistance in finding out what the facts are. And that is linked as well to the question of discretion.

I think that industrial targeting can be defined in broad terms, that one could require a process to take place, consultations with the industry and with the Congress, and an investigative procedure from which recommendations would be required. It might not always be trade restrictions. It might be that one would have to consider broader questions. A shortage of electrical engineers might be helped with an educational program similar to NDEA in the 1960's and 1970's.

It just seems to me that we have lost our pragmatic approach. Because people have been frustrated about our trade laws, we have put things in narrow, legalistic categories where they do not fit very well. The problems that we face today are not just subsidies or countervail or antidumping or, specific unfair practices, they are broad problems involving both domestic policy and trade policy. We do not have a sufficiently broad way of analyzing these problems to come up with sensible solutions.

Mr. **Frenzel**. Well, if we had a broad way of analyzing it—I am not sure that we are ever going to have a very good one in our lifetime—but what relief section would you go into? Would you go antisubsidy, the way the chairman is suggesting, or 201, the way Senator Heinz is suggesting? Or would you go some other direction?

Mr. **Wolff**. I think that where a subsidy practice is uncovered the right to an automatic countervailing duty should be unimpeded. Therefore, if there were a separate track provided, either against targeting or refurbishing of 301, it ought not to diminish the ability to get relief under existing statutes or statutes as amended to broaden definitions where specific unfair trade practices exist.

But that should not be the end of it. It will not suffice.

Mr. **Frenzel**. Our problem—I do not know what our problem is, but one part of it is, it is pretty hard to get people to use the laws that exist. For instance, we used to say that if somebody is dumping, file antidumping. So they did.

In the first case the Federal Government decided that it was administration policy that it was better to have a trigger price. That seemed no longer sufficient, cases were reinstated, and this time, apparently to the great glee of the steel companies, another solution was adopted, a solution that I think was outside of our laws and outside of GATT.

We have a lot of trouble getting people to use what we have got.

Mr. **Wolff**. Well, the problems, it seems to me, are broader than the statutes. In the case of steel, I found it rather appalling that when we announced the deal with the European Community, they announced the same day they were shutting out steel from Eastern Europe, Brazil, and Korea. That just puts more pressure on our market or, if that steel does not come here, it seems to me it just causes enormous problems for those countries.

So in essence, where there is a worldwide problem, which there is in the steel sector, instead of sitting down and figuring out what kind of solutions might be most appropriate, we have taken a patchwork approach, and it leads to constant problems.

People often complain about the fact that steel has received protection sporadically over the last 10 or 15 years. The steel industry feels that way as well. There are major structural problems that we are not facing up to and the solution with the Community, a quota, with the depressed market conditions in this country has been in effect a license to dump. It is not a perfect solution by any means. It is far from it.

The problems go beyond dumping, and this administration has not seen fit to sit down with the steel industry and talk through what those problems are and what the solutions might be.

One might not want the answers that come out of the process. One might not accept the recommendations which come out of it, but at least the discussion would point out what the problems are.

Mr. FRENZEL. Maybe that is the problem, but it looked to me like the solution that was negotiated was fine with our steel companies, it was fine with the EC, and the party that was supposed to be negotiating it was just along for the ride, and that is the U.S. Government.

Mr. WOLFF. There was that appearance.

Mr. FRENZEL. Well, it looks like they have no interest in the people who made up their steel market. The EC got what they had wanted all along. And here comes the Japanese cars and we invent the new rule called the voluntary restraint.

My judgment is that we have got some laws that maybe somebody ought to try to use. But they do not. You put a little pressure on the Government and the Government will try something else. There will arise an ad hoc situation that temporarily relieves the pressure, and then 5 minutes later we are back with domestic content or another antidumping.

Mr. WOLFF. Well, it may demonstrate that we have an excessively legalistic approach. Litigation is not necessarily the best way. Other governments are managing their economies to a much greater extent than we are.

Mr. FRENZEL. But no more successfully.

Mr. WOLFF. It may differ from sector to sector. They are capable of causing us some real problems. It is somewhat distressing that, in telecommunications, in fiber optics, in heavy electrical generating equipment, in area after area where we are highly internationally competitive, tariffs or quotas are not a problem, and nevertheless markets are not open to us.

Governments intervene very substantially. We have got to be able to sit down with them, and work out some solutions on a sectoral basis for market access, as well as occasionally granting some protection here where it is warranted.

Mr. FRENZEL. Well, I guess I agree. I think that we ought to be working out the market access. But it seems to me it is very hard to do that when we are threatening to close our own market. It is very difficult to negotiate market access when we are telling everybody that we are going to cut off something here. It is hard to find a sector where we are not threatening to cut off.

Mr. WOLFF. Well, a few months ago I sat next to a person who was involved in the administration of our automobile program in the U.S. Government and I said, well, what do you do. And he said, well, our role is to say no. The industry comes in, they want anything, we say no. The unions come in, they want anything, we say no.

The only thing to which people do not say no is the import restrictions or the voluntary export restraint. So we end up giving the protection. We intervene, but we do not know exactly where we are going with it. How long will it last? Is it tied to some program, some objective? No.

Mr. **Frenzel**. We gave them one-half of the Heinz package, but they did not give us their half.

Mr. **Wolff**. I think it is worth having some changes to bring about just a more open-eyed approach to what is going on out there. We do ultimately grant the protection. It is not a free trade solution to avoid sitting down with an industry and discuss what is needed.

Mr. **Frenzel**. Again, there are a lot of us who question how much the Federal Government wants to be in the business of pinning a rose on companies and industries, and I would guess the European experience would not give you a lot of confidence in that system.

I suppose if you look at Japanese automobiles you would not have a lot of confidence in it either. Perhaps they were lucky, but certainly they were not one on whom MITI wanted to let the light shine.

It is very vexatious. I guess I go with the chairman and look for ways to try to quantify what we perceive to be subsidy, and boy, I do not think that is going to be an easy chore, even after we get the information developing mechanism about which you have been talking. I do not know how you quantify the direction of bank credit in a country whose system is different from ours, and I have not found any yet that is the same as ours.

I was thinking when Senator Heinz said we needed a different deal for nonmarket economies, we need a different standard for every country we do business with. You know, all of them, the Government is in the game and each of them is kind of a different game.

Mr. **Wolff**. There is one area in which countries are very open, and that is when they target an industry it is generally a highly public process, including in Japan. If we were to go and hold consultations immediately with respect to the adverse effects that we expect might occur from industrial targeting, maybe we could head off some problems before they get too advanced.

Chairman **Gibbons**. If the gentleman from Minnesota will allow me to interrupt.

That is one of the ideas that I had. We would be far better off if we headed off the practices and I think if we take a steady stand on the issue that we will head off a lot of the more pernicious practices of targeting. I realize that when you try to define targeting as a subsidy you are going to run into some ridiculous examples about how many times a day you get the mail or something like that. Those kinds of things are not the kinds of things that I am thinking about.

I am thinking about preferential credit arrangements, exclusion from competition in the domestic market from both inside and outside, the marshaling of forces together that amounts to a very clever subsidy, a bounty of some sort. It is probably better than even a subsidy.

But I would think that in this kind of scenario—you mentioned it and it has become apparent that countries, when they start a program of targeting, do it very openly. Some do it by statute, some do it by official publications or things of that sort.

As soon as that happens, it seems to me that we should start taking a responsive action, and that perhaps maybe the first thing to do would be to call the American industry and let them know, first of all, that they are being targeted, because some of them do not realize they are being targeted. I think they do now because it has gotten so bad.

But let them know they are being targeted, ask them to convene somewhere that would not throw them in an antitrust situation, and talk about what their problems are going to be with that targeting on the other side, and make suggestions to our Government about what can be done to successfully fend off that targeting.

One of the things, of course, that needs to be done is we need to immediately start collecting information. We need to immediately start sending investigators to the foreign country that plans to target, to pick up information as to what they are doing, and to use all of our resources in gathering that type of information.

It seems to me that we have known, for instance, that Japan has targeted many industries over a long period of time, but we just kind of sat around and said, oh, ho-hum, so what, let us wait until a body is brought in before we worry about what action we are going to take, and then we will determine whether that dead body is a seriously injured body or not.

Mr. **Wolff**. I applaud the direction you are heading in. I think it is worthwhile examining how our current remedies with respect to dumping and countervail can be expanded conceptually to take care of some of the problems that fit within those statutes.

You cannot countervail preemptively. You have to wait until the product——

Chairman **Gibbons**. Crosses your borders.

Mr. **Wolff**. By then you are in real trouble, because globally that country, if it has been successful—and as you have pointed out, very often these projects are not successful; they are just enormous duds—but if they are successful you are too late.

And that is why I would hate to see the sole focus be protection of the American market after the programs have taken hold.

Chairman **Gibbons**. But threatening to countervail in a market that is as big as the American market would certainly cause most people to stop and say, well, is it worth the trip, is it worth the expense, is it worth the violation of all the other things in our own economy to start this targeting? Because we know we are going to get certain action against us when we try to penetrate that American market.

I do not have any objection to targeting as long as they do not try to penetrate our market or take away markets from us that we are legitimately entitled to with our nontargeted competitiveness. But if somebody wants to create a space program because they think it is important for their own national security or they think it is just important because they want to have a man on the Moon, like we put a man on the Moon, that is all right with me.

But when they say, we are going to take over your next phase of the computer industry or your next phase of the high-tech electronic industry, they are not talking about something as innocuous as putting a man on the Moon or worrying about national security; they are aiming at jobs in my country. And I think that is when it becomes seriously my problem.

I realize we cannot do anything to them and should not do anything to them until their products begin to arrive in our country. But we ought to make sure that they understand that we are going to do something and do something pretty responsible. I think that would calm down their enthusiasm for targeting, because they obviously have to pick winners and losers in their own country, which is not a very popular political position to be in.

I would think that if we can concentrate on the unfair trade practices, the ones that we recognize in our own statute as being unfair, try to find ways of accumulating information before the bodies begin to arrive on the docks, and make certain that there is an appropriate remedy available there that is not going to be bargained away, as was done in the steel cases time and again, that we can eventually see some solution to the problems of unfair competition.

I am defining unfair competition as subsidized competition in a broad sense, or predatory dumping just to gain a market share and exclude legitimate competition.

Mr. **Wolff**. Well, I think that path holds a fair amount of promise. I think unless we act, we will never see a change in conduct abroad.

Chairman **Gibbons**. No, I do not think the GATT is self-executing. We are going to have to enforce the subsidies code. We are going to have to enforce the laws against subsidies. We are going to have to do it essentially with our market and what effect we can have on other markets.

Mr. **Wolff**. But I would just urge that in some form the legislation have a positive approach to opening the foreign markets. Our objective is not protecting this market so much as it is to have everyone play closer to the same rules, opening up foreign markets.

If we achieve that, for example, if American companies are investing widely in other countries, which is only now becoming possible in Japan, and is becoming less and less possible in France, it will be more and more difficult for these countries to subsidize their own industries. This is because the national treatment principal would then require subsidizing American companies as well, and that would not be very popular.

So to the extent that industry is able to invest and to the extent American industry is able to sell abroad, targeting becomes very difficult. It is only with the ability to pick and choose and to restrict access to one's market that it becomes possible to run a mercantilist industrial strategy.

So ultimately to me the question is how to get other countries to recognize that there are limits to attempts to dominate a particular area or a particular segment of world trade.

Chairman **Gibbons**. While we have got you here—and probably there is no one witness that we have with as much insight as to how this Government works as you do—where should we center this investigative function? In the USTR Office, we are faced with the fact that every President that comes in wants to throw the USTR Office out of the White House.

There is a distrust of Commerce's ability to do it, as there was a strong based distrust of Treasury's ability to do it in the seventies, or even desire to do it. And obviously the State Department is not the place to put it. Well, what about putting it in the International Trade Commission? Is that a place that could be depended on to vigorously conduct an investigation of targeting when it comes up?

Mr. **Wolff**. My feeling is that, we have the executive branch to execute the laws, if we can get it done appropriately and expeditiously. The International Trade Commission performs a very useful function in being an unbiased, impartial investigator and judge of impact of foreign competition on the U.S. market. It performs that role well. It does not have currently the expertise that is required and it would be somewhat duplicative of what would in any event have to exist in some executive branch agency to create that foreign investigative capacity over at the ITC. And I think it would also distract them from their primary function.

My preference would be to lodge the investigative function in the executive branch. The natural place would pose some difficulties. If you separate it from the negotiating function completely, then, as was seen in the steel case, you have a chief U.S. negotiator who does not have the action on the major trade problems of the time. That is very difficult for him. Between major rounds of multilateral negotiations and we may have entered into a time when we are permanently between major rounds of negotiations—it is very difficult for him to function as the chief spokesman for trade.

Chairman **Gibbons**. Are these rights we want to negotiate away? That is a problem. You know, that has always been one of the complaints, that here is a bargaining chip. We have got the steel industry or let us say we have an industry that is being targeted. We will negotiate on that.

That has been one of my complaints, really, is that we have negotiated too many remedies. Why do you not expound on that?

Mr. **Wolff**. USTR has negotiated the relief on televisions, on specialty steel, on automobiles. I think it has effectively represented U.S. interests in a negotiating context. It was not in charge of negotiating away the color TV dumping finding or the steel finding, so I do not think that putting the negotiator into this context would necessarily dilute the process. We are dealing with domestic policies of foreign governments in this particular area. Negotiations will often be necessary.

It seems to me that there ought to be an automatic component, and the direction you are seeking and exploring in countervailing duties is a useful one to explore. I would be reluctant to take away the negotiating function with respect to nonsubsidy elements of the case, because I fundamentally believe that ultimately one has to open up foreign markets. Otherwise, we have to close down more and more. There is no alternative other than to suffer an erosion of our industrial base. That is primarily a negotiating function in my view. I would not remove that from the USTR.

Now, I personally believe that ultimately we have to come to a more sensible arrangement of our trade functions in the government and some unification of them. I know that that provokes nothing but yawns.

Chairman GIBBONS. No; I am just thinking about the time we put another 100 investigators in the Executive Office of the President, in the USTR, and the next President, no matter who he is, is going to say, gosh, I do not want a White House staff that big, and we will go through this perennial battle every 4 years of trying to preserve the USTR office. That is what worries me.

Mr. WOLFF. Well, my personal predilection is to ultimately have a Secretary of Trade who, like George Shultz in his last incarnation was chairman of an interagency board with a small White House staff for policy coordination, but also quite separately ran the line functions of Treasury. You could have a man who was both the President's chief spokesman on trade and his chief adviser ran an independent interagency process in the White House with a very small staff, and was chief executive officer of a line department.

I do not foresee that happening in the near future, and in the meantime, one will live with the second best solution.

Chairman GIBBONS. Well, I wish you would think about it a little, because I do not know of anyone who has had more experience that is now outside the Government looking in than you have had in this particular area. We need your counsel and guidance.

Mr. Pease? I am sorry I have taken up so much time.

[No response.]

Chairman GIBBONS. Mr. Frenzel?

[No response.]

Chairman GIBBONS. Thank you very much. We appreciate it.

Mr. WOLFF. Thank you.

Chairman GIBBONS. Our concluding witness for the day is Mr. Calman Cohen, who is here to represent the Emergency Committee for American Trade. Mr. Cohen, you likewise have had considerable experience in the office of the U.S. Trade Representative, and we welcome you here. You may proceed as you wish.

STATEMENT OF CALMAN I. COHEN, VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE ON BEHALF OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN

Mr. COHEN. Thank you, Mr. Chairman. Congressman Frenzel, and Congressman Pease.

Robert McNeill, as you know, had planned to be here. Illness has prevented his attendance, and today I would like, though, to talk about some of the concerns of the Emergency Committee on issues before the subcommittee.

Chairman GIBBONS. Before you do, I did not know Mr. McNeill was ill. Is it he or some member of his family?

Mr. COHEN. He. He should be recovering shortly.

Chairman GIBBONS. Oh, good. Fine.

Mr. COHEN. Our members have a fundamental stake in U.S. international trade policies. A measure of that interest is the $700 million of worldwide sales that they had in 1981. Our statement today is limited to comment on section 201 of the Trade Act of 1974, the so-called escape clause. Section 201 is the conforming U.S. statute to article 19 of the GATT which authorizes the imposition of protective import measures to alleviate serious economic injury caused by competitive imports that are not subject to unfair foreign trade practices.

While we in ECAT would clearly prefer to see no weakening of the current section 201 test for import relief, we are aware that there is a widespread domestic concern with the adequacy of section 201 during times of economic recession. The International Trade Commission's decision in the United Auto Workers auto case raises the basic question of whether during times of economic downturn, it can be established that imports are the substantial cause of serious injury.

The statute, as you all well know, defines substantial cause as a cause which is important and not less than any other cause. While the ITC in the auto case recognized imports as a cause of the economic problems of the industry, imports were found to be a less important cause than the depressed economy itself. Import relief was therefore denied.

It is this definition of substantial that raises the concern about the general adequacy of section 201 during recession. If the definition of substantial cause involved in the ITC's auto decision were to be generally applied, then it is unlikely that section 201 can provide import relief during periods of economic recession.

This poses a very serious policy dilemma which is exacerbated by a growing awareness that the U.S. criteria for providing section 201 relief are tougher than the criteria of GATT article 19 and tougher than the criteria used by other countries. This has engendered concern that U.S. law imposes an unfair burden on U.S. industries that seek import relief as compared with the burden borne by their foreign competitors.

The policy dilemma is a most acute one. While time and an improving economy will lessen section 201 concerns, they nevertheless will continue. If the Congress and the administration fail to address them, then solutions to import problems increasingly will be sought outside the rules, as in the auto case, by industries and unions with sufficient political power to force action.

Failure to act could also contribute to a lack of confidence that import problems can be managed fairly under differing economic circumstances. Failure to act would further encourage such Draconian solutions as that proposed in the domestic content legislation.

The other side of the 201 policy dilemma concerns the severe costs that could be involved in a general lowering of the threshold for import relief. Too easy a test would result in either substantial compensation bills owed by the United States to foreign countries whose trade would be disadvantaged by section 201 relief or in foreign retaliation against U.S. export if our trading partners decided against accepting compensation offered them by the United States.

In either case, domestic industries and workers, not parties to the 201 process, would have to pay the price for the import relief granted to others, a not appealing prospect.

As I believe members of this subcommittee well know, import restrictions imposed pursuant to section 201 almost always modify a U.S. import concession that other countries have paid for in the form of a reciprocal lowering of their own import barriers.

Since something of value has been taken from them by escape clause restrictions, the GATT rules authorize them to right the balance by imposing restrictions of their own against a similar volume of their imports from the United States or from any other country taking similar action, or by being compensated by the United States through the lowering of our import barriers on a like volume of their exports as that affected by the section 201 restriction.

An exception, of course, occurs in cases where 201 import relief is accomplished through a negotiated settlement. Another aspect of the policy dilemma raised by a prospective lowering of the threshold for import relief is that any advantages provided an industry through such relief could more than be offset by net costs to the economy as a whole.

Consumers, for example, would pay higher prices than they otherwise would. The more basic the protected product, the more the higher costs would be spread throughout the economy. Because nothing in the process provides assurance that import relief is conditional on a plan to adjust to import competition, lowering the threshold for protection, risks, increasing the number of economic sectors requiring continuing relief.

As devotees of the historic U.S. trade policy of seeking liberalization of barriers, we are also hesitant to recommend 201 changes, but we also recognize the significant strains being imposed on that policy, and by the generally depressed state of the world economy. If the Congress decides that the threshold for relief under section 201 should be lowered, we in ECAT recommend that the lowered threshold should be utilized only during periods of economic stress.

We would further believe it important that features be incorporated that are intended to minimize the costs earlier referred to and that encourage adjustment of the affected industry to self-sustaining competitiveness. We have considered several ways in which such a result might be accomplished, Mr. Chairman. The most feasible way appears to us to be a two-track system whereby the present language and provisions of section 201 would be preserved as a track one.

An alternate system utilizing a lesser degree of import causalty could be treated as a track two. Track two would be available only during periods when established criteria signal the existence of a recession in the U.S. economy. Now, that might be using unemployment statistics or other criteria.

The degree of causalty between competitive imports and serious economic injury or the threat of serious economic injury would be less than the general substantial test. Whatever the adjective used, and we are not suggesting a particular one at this point, the intention should be that imports do not necessarily have to be a cause as important as or greater than any other cause. Otherwise, recession itself is likely to be considered a more important cause that imports during periods of domestic economic stagnation.

I would like to make a further point, and this does pick up on some of the recommendations, a version of the recommendations that Senator Heinz made earlier. We further suggest that eligibility for recourse to track two be conditional on submission by the applicants of an acceptable plan for adjustment to import competition.

We do not, however, I might point out, create or carve a specific activist role out for government in this adjustment plan. The plan should be supported by both labor and management. It should set out detailed steps for overcoming competitive disadvantages, addressing such issues as labor costs and modernizing capital stock, and should propose staging requirements in the recovery process which must be met if import protection is to continue.

ECAT believes that a strong case can be made for linking relief and adjustment in any modification of section 201. As we have noted, import relief for one industry involves costs to other industries and their workers, and can involve a net cost to the U.S. economy generally. These costs can be minimized and ultimately returned if impacted industries can be restored to full competitiveness either in the impacted sector or in other sectors offering more opportunity.

Import relief confers certain benefits to the protected industries that can be roughly quantified. It would not be unreasonable, we believe, to insist that the net benefits from the relief be reinvested in improving competitiveness, especially under circumstances in which track two would be applicable.

The process which we have just briefly described that would constitute track two would encourage management and labor both to work together in facing up to their joint problems, many of which you have been discussing, Mr. Chairman, and to undertake joint efforts to improve their competitiveness as a condition for temporary import relief.

Before concluding, I would like to express ECAT's very strong support for conclusion of an international safeguards code. In today's competitive world, we should all march to the same drummer.

To the extent possible, the same international rules should be practiced equally by all members of the international community. Many American businessmen find it frustrating that their government applies the spirit and the letter of the GATT and other international rules to them, whereas the governments of their foreign competitors also do not apply the same rules to their own citizens.

This frustration is particularly applicable to the GATT escape clause and our own section 201 implementation of it. An international safeguards code, we believe, is necessary for the protection and advancement of the United States and the world economy. Thank you.

[The prepared statement follows:]

STATEMENT OF ROBERT L. MCNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

SUMMARY

1. ECAT is concerned that the degree of causality required by Section 201 to demonstrate that imports are a substantial cause of serious economic injury to domestic industries might be too tough a test to be met during periods of domestic economic recession.

2. If the above concern proves to be generally valid—as it was in the Section 201 auto case—then industries and groups of workers will seek import relief via the political process rather than the administrative process in current law.

3. Congress, therefore, might consider lowering the Section 201 threshold for import relief. This, however, could lead to numerous successful Section 201 applica-

tions for import relief. A consequence would be either a demand for compensation from the United States or foreign retaliation against U.S. exports. Either alternative would be at the expense of other U.S. industries and their workers and could involve net overall costs to the U.S. economy.

4. ECAT suggests, therefore, that if the Section 201 import relief threshold is to be lowered it be through a two-track system, Track I would be the current Section 201. Track II would establish a softer threshold test available only during periods of economic recession and only on condition that a satisfactory adjustment plan be submitted, approved, and implemented by the industry receiving import protection.

5. ECAT urges conclusion of an international safeguard code so that all governments will follow the same or similar "escape-clause" rules and practices.

STATEMENT

Mr. Chairman and members of the Ways and Means Trade Subcommittee, thank you for the opportunity to testify today on behalf of the 63 members of the Emergency Committee for American Trade. Our members have a fundamental stake in U.S. international trade policies. A measure of that interest is the $700 billion of worldwide sales that they had in 1981. ECAT members account for a substantial share of total U.S. exports and are among the largest U.S. employers and overseas investors.

Our statement today is limited to comment on Section 201 of the Trade Act of 1974, the so-called "escape-clause." Section 201 is the conforming U.S. statute to Article XIX of the GATT, which authorizes the imposition of protective import measures to alleviate serious economic injury caused by competitive imports that are not subject to unfair foreign trade practices.

While we would clearly prefer to see no weakening of the current Section 201 tests for import relief, we are aware that there is a widespread domestic concern with the adequacy of Section 201 during times of economic recession. The International Trade Commission's (ITC) decision in the United Auto Workers' auto case raises the basic question of whether during times of economic downturn it can be established that imports are the "substantial cause" of serious injury. The statute defines "substantial cause" as "a cause which is important and not less than any other cause." While the ITC in the auto case recognized imports as a cause of the economic travails of the domestic automobile industry, imports were found to be a less important cause than the depressed economy. Import relief was therefore denied. It is this definition of "substantial" that raises the concern about the general adequacy of Section 201 during recession.

If the definition of "substantial cause" involved in the ITC's auto decision were to be generally applied, then it is unlikely that Section 201 can provide import relief during periods of economic recession. This poses a very serious policy dilemma which is exacerbated by a growing awareness that the U.S. criteria for providing Section 201 relief are tougher than the criteria of GATT Article XIX and tougher than the criteria used by other countries. This has engendered concern that U.S. law imposes an unfair burden on U.S. industries that seek import relief as compared with the burden borne by their foreign competitors.

The policy dilemma is an acute one. While time and an improving economy will lessen Section 201 concerns, they nevertheless will likely continue. If the Congress and the Administration fail to address them, then solutions to import problems increasingly will be sought outside the rules—as in the auto case—by industries and unions with sufficient political power to force action. Failure to act could also contribute to a lack of confidence that import problems can be managed fairly under differing economic circumstances. Failure to act would further encourage such draconian solutions as that proposed in the domestic content legislation.

The other side of the Section 201 policy dilemma concerns the severe costs that could be involved in a general lowering of the threshold for import relief. Too easy a test would result in either substantial compensation bills owed by the United States to foreign countries whose trade would be disadvantaged by Section 201 relief or in foreign retaliation against U.S. export industries if our trading partners decided against accepting compensation offered them by the United States. In either case domestic industries and workers not parties to the Section 201 process would have to pay the price for the import relief granted to others—a not appealing prospect.

As I believe members of this subcommittee well know, import restrictions imposed pursuant to Section 201 almost always modify a U.S. import concession that other countries have paid for in the form of a reciprocal lowering of their own import barriers. Since something of value has been taken from them by escape-clause restrictions, the GATT rules authorize them to right the balance by imposing restrictions of their own against a similar volume of their imports from the United States—or from any other country taking similar action—or by being compensated by the United States through the lowering of U.S. import barriers on a like volume of their exports as that affected by the Section 201 restriction.

An exception to the compensation/retaliation problem, of course, occurs in cases where section 201 import relief is accomplished through a negotiated settlement with the trading partners whose imports are threatened to be restricted.

Another aspect of the policy dilemma raised by a prospective lowering of the threshold for import relief is that any advantages provided an industry through import relief could more than be offset by net costs to the economy as a whole. Consumers, for example, would pay higher prices than they otherwise would. The more basic the protected product, the more the higher costs would be spread throughout the economy, thereby undermining the competitiveness of other industrial sectors in both domestic and foreign markets.

Because nothing in the section 201 process provides assurance that import relief is conditional on a plan to adjust to the import competition, lowering the threshold for protection risks increasing the number of economic sectors requiring continuing relief in some form. This is a serious risk which raises the question of whether section 201 import relief should be conditional on an acceptable adjustment plan.

As devotees of the historic U.S. trade policy of seeking liberalization of barriers to international trade, we are hesitant to recommend section 201 changes. But we also recognize the significant strains being imposed on that policy by rapidly increasing foreign competition—often encouraged and directed by foreign governments—and by the generally depressed state of the world economy.

If the Congress decides that the threshold for relief under section 201 should be lowered, we in ECAT recommend that the lowered threshold should be utilized only during periods of economic stress. We further believe it important that features be incorporated that are intended to minimize the costs earlier referred to and that encourage adjustment of the affected industry to self-sustaining competitiveness.

We have considered several ways in which such a result might be accomplished. The most feasible way appears to us to be a two-track system whereby the present language and provisions of section 201 would be preserved as Track I. An alternate system utilizing a lesser degree of import causality could be created as Track II.

Track II would be available only during periods when established criteria signal the existence of a recession in the U.S. economy. The degree of causality between competitive imports and serious economic injury or the threat of serious economic injury would be less than the general "substantial" test. Whatever the adjective used, the intention should be that imports do not necessarily have to be a cause as important as or greater than any other cause. Otherwise, recession itself is likely to be considered a more important cause than imports during periods of domestic economic stagnation.

We further suggest that eligibility for recourse to Track II be conditional on submission by the applicants of an acceptable plan for adjustment to import competition. The plan should be supported by both labor and management. It should set out detailed steps for overcoming competitive disadvantages (addressing such issues as labor costs and modernizing capital stock), and should propose staging requirements in the recovery process which must be met if import protection is to continue.

ECAT believes that a strong case can be made for linking relief and adjustment in any modification of section 201 that weakens the causal link between imports and serious economic injury. As we have noted, import relief for one industry involves costs to other industries and their workers and can involve a net cost to the U.S. economy generally. These costs can be minimized and ultimately returned if impacted industries can be restored to full competitiveness either in the impacted sector or in other sectors offering more opportunity.

Import relief confers certain benefits to the protected industries that can be roughly quantified. It would not be unreasonable to insist that net benefits be reinvested in improving competitiveness, especially under circumstances in which Track II would be applicable.

The process which we have just briefly described that would constitute Track II would encourage management and labor both to work together in facing up to their joint problems and to undertake joint efforts to improve their competitiveness as a condition for temporary import relief.

Before concluding, I would like to express ECAT's very strong support for conclusion of an international "safeguards" code. In today's competitive world we should all march to the same drummer. To the extent possible, the same international rules should be practiced equally by all members of the international community. Many American businessmen find it frustrating that their government applies the spirit and letter of the GATT and other international rules to them whereas the governments of their foreign competitors often do not apply the same rules to their own citizens. This frustration is particularly applicable to the GATT "escape-clause" and our section 201 implementation of it. An international safeguards code is necessary for the protection and advancement of the U.S. and the world economy.

Chairman GIBBONS. Mr. Cohen, that was a very fine statement, and you have raised some excellent points. You pointed out very analytically the problems that we have in section 201, and it is an area that we need to address. As you pointed out, the need for two tracks, one for good times and one for bad times, I am hopeful that finally we are moving toward good times.

Mr. COHEN. I share that view with you, Mr. Chairman.

Chairman GIBBONS. I am not positive, but I am hopeful. Now, it is perhaps based upon my experience and frustration in trying to redraft these laws before that I would rather limit the scope of what this committee attempts to do.

If we get section 201 on the table, with all the ramifications of that, along with the unfair practices, I do not know how we are ever going to unscramble it all in one sitting or one session. We will never get the Congress to understand what we are doing, and we would have a terrible time even getting the trade people in the Washington area to understand what we are doing. It will be a fierce matter.

So, for agenda purposes, I would rather put the unfair trade matters first, and let us try to solve those, and solve them efficiently and effectively and resoundingly, and then tackle the so-called fair or competitive practices like we talked about here in the section 201 cases.

So, I am going to keep your testimony on file to remind me of the problems and of the suggestions that you have made here on 201, but I hope that we can avoid further complicating what looks like to me an already very complicated drafting session on the unfair remedies.

Mr. COHEN. Mr. Chairman, if I might make a point with regard to the unfair practices, I recall well that in the last Congress, you and I know Congressman Frenzel were very active in trying to devise legislation that would require an inventory of trade barriers.

Chairman GIBBONS. Yes; we are still having trouble.

Mr. COHEN. I would think in terms of the discussions that I have been listening to for the last several hours, which has been most informative, that an inventory of that sort would be most useful for government to sort out where our priorities should be in the area of acting on unfair trade practices. The way the system seems to work today is that depending on where the wheel is squeakiest, making the most noise, action is taken.

However, it would seem that if we did have some inventory prepared of these trade barriers, we might have the opportunity to get a better handle on a number of the most difficult and the most troubling ones for our economy. I do recall when we testified before this committee, we suggested in all fairness that of course any inventory should be one that gave our barriers as well as those of our trading partners.

But it is, in our view, something that we think would be very, very helpful, and perhaps we will be able to see something taken on that proposal that I know you and your colleagues have made.

Chairman GIBBONS. Good.

Mr. Frenzel?

Mr. FRENZEL. Has the causality under 201 already been changed in the Kawasaki decision?

Mr. COHEN. I think the indication from the motorcycle case is that the argument that we are making has been adopted. My concern at this point, Congressman Frenzel, would be that the Commissioners can change, and it would be very, very helpful at this point if there could be some clarification, if this is an acceptable argument, that this is the approach that should be adopted by the ITC.

Mr. FRENZEL. OK. Well, I noticed in the summary of the recommendations that you have suggestions about 201, and then you also suggest that a safeguards code be negotiated and completed. Does one of those depend on the other?

Mr. COHEN. I would not certainly make the change tied that we are suggesting in the 201. I think they are both meritorious, and I think we would like to see action on both, if that is the direction of your question.

Mr. FRENZEL. You do not believe they should be linked?

Mr. COHEN. I do not.

Mr. FRENZEL. Well, we appreciate your testimony, and as the chairman has suggested, I think a lot of the members of the subcommittee are not terribly anxious to get into 201. I can think of nicer times for reconsidering this kind of legislation.

Mr. COHEN. I can understand that reservation.

Mr. FRENZEL. I would guess that perhaps some of your members would have some misgivings as well.

Mr. COHEN. I think there is a great deal of concern that to open up the trade issue in the form of a major piece of trade legislation could bring about a call for a number of protectionist measures, and that is a most difficult and troubling fear that we do have.

Mr. FRENZEL. But you decided that the need was so great that you would make the suggestion anyway?

Mr. COHEN. Yes; in the sense that we felt, as we suggested, that without some change, there may be increasing pressures, as in the case of those calling for domestic content legislation, for ways to bypass the trade laws, and we felt if this type of change that we are suggesting could be made, it might obviate the need as some perceive it for some of the more protectionist measures.

Mr. FRENZEL. May I interpret that as finding that you are being run out of town, you get a sign and get to the head of the parade?

Mr. COHEN. No; I do not think that I would want to interpret it that way. I would want to interpret it more in terms of our concern that this is a basic problem, and we do think that it is beginning to be addressed by the most recent decisions, though, as you correctly point out, out of the ITC.

Mr. FRENZEL. As one of the great admirers of your organization, I have some concern about the suggestion that you may be leading us into the valley of the shadow of death. I thank you for your testimony.

Chairman **Gibbons**. Mr. Pease?

Mr. **Pease**. I would just say that I understand in that valley you need to fear no evil, so it is probably no problem. I have one question of clarification along the same lines. The testimony that you read in the beginning of the third paragraph says, "While we would clearly prefer to see no weakening of the current section 201 test for import relief." This statement suggests to me that except for the political considerations that you mentioned, you would prefer not to see any two track system or any other change currently. Is that correct?

Mr. **Cohen**. That is correct.

Mr. **Pease**. OK. Thank you very much.

Chairman **Gibbons**. Thank you very much.

This concludes our hearing. We will begin at 9:30 tomorrow.

[Whereupon, at 5:35 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., Thursday, April 14, 1983.]

OPTIONS TO IMPROVE THE TRADE REMEDY LAWS

THURSDAY, APRIL 14, 1983

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, D.C.

The subcommittee met at 9:35 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman **Gibbons**. Good morning, ladies and gentlemen.

This is a continuation of our hearings on trade remedies and our first panel this morning is from the Labor-Industry Coalition for International Trade. I see our panel members already seated so I will not call their names off but as each one testifies, if you identify yourself for the record we would appreciate it.

You may proceed as you wish. I understand Mr. Harris is to be the first witness—excuse me, Mr. Bywater.

STATEMENT OF WILLIAM BYWATER, PRESIDENT, INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO, ON BEHALF OF THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

Mr. **Bywater**. Thank you, Mr. Chairman.

I am William Bywater, I am president of the International Union of Electrical, Radio & Machine Workers, AFL-CIO. We are here today on behalf of the Labor-Industry Coalition for International Trade [LICIT], to present the views of our coalition about improving our Nation's trade remedy laws.

Improving these laws is not an end in itself. Our ultimate concern is with the current status and future international competitiveness of American industries and the jobs they provide for our people.

The purpose of these hearings is to focus on options to improve the Nation's trade remedy laws. To do this properly, we must understand how the international trading system currently operates and the specific types of trade effects that require remedial action.

Since the end of World War II, national markets have become more integrated and dependent on each other. This has been the result of the reduction in traditional tariff barriers, the dramatic improvements in international transportation and communications, and the rapid growth of international trade and investment in the postwar era. Today, any given change in one national market, whether from a technical innovation or Government policy, has a much greater effect on other countries than two or three decades ago.

This industrial convergence, along with its effect on economic interdependence, has grown at a rapid pace. The U.S. industrial sector has been particularly affected. By the beginning of 1980 the United States exported almost one-quarter of its manufactured output (compared to about 8 percent in 1960).

Manufactured imports exceed 21 percent of U.S. manufacturing production (compared to under 5 percent in 1960). It is not only the relative magnitude of this interdependence but the rapidity of its increase in the last two decades that has dramatically highlighted the fact that U.S. producers compete in a world market. And it is a world market shaped by the policies of many governments, not just an isolated domestic market shaped only by American policies.

These economic changes have brought the issue of industrial policies to the forefront of the debate on international economic policy, the relevancy of the GATT, and the future direction of the world economy.

Less than 2 weeks ago, LICIT released a report entitled, "International Trade, Industrial Policies and the Future of American Industry." The executive summary of that study is attached to this testimony and we have brought copies with us for the subcommittee. The report analyzes the implications for American industry of what we see as the growing gap between the industrial policies and supportive economic programs of other countries and those in the United States.

This situation presents America with an international competitive challenge, the outcome of which will influence the shape of the American economy into the next century. National governments abroad are increasingly reluctant to leave their industrial development to the private sector and the operation of the market. In contrast, the United States has remained virtually alone in pursuing a basically market-determined allocation of industrial resources.

The number of manufacturing sectors which are the object of industrial policy measures has increased greatly in the past 10 years. Industrial policies are directed not only toward more traditional and basic industries like steel, shipbuilding, textiles, apparel, and footwear. They are also being directed in many countries to the promotion of the industries such as aircraft, semiconductors, computers, robotics, automobiles, fiber optics, machine tools, heavy machinery, and large electrical generating and transmission equipment.

Industrial policies are thus used to both restructure industries faced with slower growth as well as to target new industries for future growth and expanding world market shares. These policies are being implemented today in both developed countries, such as Japan, France, West Germany, Canada, and Sweden, and the newly industrializing countries (for example, Mexico, Brazil, South Korea, and India).

It is essential to evaluate and take into account the industrial policies of other countries when assessing U.S. international competitiveness. A failure to respond appropriately to industrial policy initiatives and targeting of other countries can only mean that serious harm to the American industrial structure will likely result.

To be effective in these new conditions, trade policy can no longer be concerned exclusively with measures other countries take at the border. Similarly, policies traditionally considered to affect only domestic economic conditions can no longer be implemented in ignorance of their implications for U.S. trade and international competitiveness.

The task facing our country is to understand and assess the actual and potential effects of other countries' industrial policies on the American economy, and to form a consensus concerning what we, as a nation, will do for our own industrial economy.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF WILLIAM BYWATER, PRESIDENT, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS AND JOHN D. ONG, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, THE BF GOODRICH CO., ON BEHALF OF THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

Mr. Chairman:

We are here today on behalf of the Labor-Industry Coalition for International Trade ("LICIT") to present the views of our coalition about improving our nation's trade remedy laws. Improving these laws is not an end in itself but part of a broader concern with the current status and future international competitiveness of American industry.

LICIT is a voluntary association of industrial unions and corporations representing a broad spectrum of American industry, and is not an official arm of any labor or business group. The coalition's charter states that LICIT "seeks to represent the common interest of American workers and American business in promoting increased, balanced, and equitable trade among all nations of the world. Without reference to outdated slogans of 'free trade' and 'protectionism', LICIT will support adoption of government policies and industry practices which encourage open, fair competition for foreign products in the United States market as well as for American made products in foreign markets."

U.S. Trade Remedy Laws and the World Trading System in the 1980s

The purpose of these hearings is to focus on options to improve the nations's trade remedy laws. We believe that in order to do this, a clear understanding is necessary of the international trading system as it currently operates and the specific types of trade effects that require remedial action. The major trade remedy laws in existence today were designed for a different time and for narrowly-drawn causes of action -- dumping or export subsidies. The antidumping law was first enacted in 1921 and the countervailing duty law, although amended in 1974, dates back to 1897. We are not suggesting that these laws are no longer necessary or useful, but rather that they are no longer adequate to deal with the trade problems the United States faces in the 1980s.

A newer trade remedy law, that designed to confront a broader array of unfair trade practices (Section 301), contains so much discretion and is so poorly staffed that petitions are rarely seen through to a satisfactory conclusion either through modification of the unfair foreign practice or through the application of offsetting measures by the United States. Our escape clause procedures (Section 201) always entail a great degree of uncertainty and delay; the pattern of granting and denial of relief can best be described as quixotic. And finally, all of the trade remedy actions are very costly and often beyond the reach of many companies, labor unions and other interested parties.

Congress can change these laws to make the remedies more certain, more timely and less costly. This should be done. However, LICIT believes that improvements in these trade remedy laws alone are not an adequate response to the international trade and competitiveness problems America faces today.

Since the end of World War II the patterns of development of industrial economies of the major developed countries have steadily converged, becoming more similar. National markets have become more integrated with each other and therefore are more dependent on each other. This has resulted from the reduction in traditional tariff barriers, the dramatic improvements in international transportation and communications, and the rapid growth of international trade and investment in the postwar era. Any given change in one national market, whether from a technical innovation or government policy, has a much greater effect on other countries today than it would have had two or three decades ago.

This industrial convergence, along with its effect on economic interdependence, has grown at a rapid pace. The U.S. industrial sector has been particularly affected. By the beginning of 1980 the United States exported almost one-quarter of its manufactured output (compared to about 8 percent in 1960) and manufactured imports exceeded 21 percent of U.S. manufacturing production (compared to under 5 percent in 1960). It is not only the relative magnitude of this interdependence but the rapidity of its increase in the last two decades that has dramatically highlighted the fact that U.S. producers compete in a world market. And it is a world market shaped by the policies of many governments, not just an isolated domestic market shaped only by American policies. Individual manufacturing industries in the United States are characterized by different degrees of international competitiveness, but almost all of the U.S. manufacturing sector has experienced a dramatic increase in foreign trade competition and, in many cases, dependence.

International Trade and the Industrial Policy Gap

The economic changes briefly summarized above have brought the issue of industrial policies to the forefront of the debate on international economic policy, the relevancy of the GATT, and the future direction of the world economy. Indeed the success of the GATT, by reducing tariffs and encouraging the integration of domestic economies through world trade, has made apparent to many American firms and workers the significance and importance of what a recent LICIT report refers to as the "industrial policy gap."

Less than two weeks ago, LICIT released a report entitled International Trade, Industrial Policies and the Future of American Industry. The executive summary of that study is attached to this testimony and we have brought copies with us for the Subcommittee. The report analyzes the implications for American industry, in an interdependent world economy, of what we see as the growing gap between the industrial policies and supportive economic programs of other countries and those in the United States. We believe that you will find the report to be important. It provides a comprehensive analysis of the competitive disadvantages many American producers operate against because of foreign industrial policies and presents the implications for American industry if effective U.S. policies for industries in international competition are not forthcoming.

A factor of fundamental and increasing significance behind recent changes in international production and competitiveness is the increasing use of industrial policy measures by many governments around the world. This situation presents America with an international competitive challenge, the outcome of which will influence the shape of the American economy into the next century. National governments abroad are increasingly reluctant to leave their industrial development to the private sector and the operation of the market. In contrast, the United States has remained virtually alone in pursuing a basically market-determined allocation of industrial resources.

As the report points out, the number of manufacturing sectors which are the object of industrial policy measures has increased greatly in the past ten years. Industrial policies are directed not only toward more traditional and basic industries like steel, shipbuilding, textiles, apparel and footwear. They are also being directed in many countries to the promotion of industries such as aircraft, semiconductors, computers, robotics, automobiles, fiber optics, machine tools, heavy machinery and large electrical generating and transmission equipment. Industrial policies are thus used to both restructure industries faced with slower growth as well as to "target" new industries for future growth and expanding world market shares. These policies are being implemented today in both developed countries (e.g., Japan, France, West Germany, Canada and Sweden) and the newly industrializing countries (e.g., Mexico, Brazil, South Korea and India).

It is not only the increasing use and scope of these industrial policies that make them a matter of great concern. Their effects are also felt more intensely because of the reduction of more visible trade barriers at the border, accomplished through years of GATT negotiations, and because of the rapidly increasing foreign trade dependence of the U.S. economy. In addition, continued slow growth in the world economy and an overvalued dollar in recent years have increased the competitive pressures of these policies on American business and workers.

The urgent need for a national dialogue on industrial policies and international trade arises from the relatively unique position of the United States as the only major industrial country that does not generallly pursue conscious industrial policies.

We believe it is essential to evaluate and take into account the industrial policies of other countries when assessing U.S. international competitiveness. A failure to respond appropriately to industrial policy initiatives and targeting of other countries would permit serious harm to the American industrial structure. Such policies can affect not only the relative international competitiveness of U.S. firms -- either concerning exports or competitition with imports -- but also the decision of multinational companies to invest and produce either in the United States or in another country. To be effective in these new conditions, trade policy can no longer be concerned exclusively with measures other countries take at the border; nor can policies traditionally considered to affect only domestic economic conditions be implemented in ignorance of their implications for U.S. trade and international competitiveness.

In a world where ostensibly domestic economic policy measures increasingly have international effects and can easily substitute for more traditional, internationallly regulated trade policies, the future shape of American industry and the future ability of the international trading system to provide a framework for open trading relations may depend on whether, how and when an international consensus can be developed on the use of industrial policies which affect the economic interests of other countries.

Recommendations

As part of the process of forming a consensus on the proper American policy in this new competitive environment, LICIT put forward a number of recommendations in the study International Trade, Industrial Policies and the Future of American Industry. These recommendations address the need for better implementation of U.S. trade laws and improvements in some of the provisions and coverage of those laws. The study also recommends the necessity of looking at trade actions in conjunction with domestic economic policies aimed at improving the vitality and international competitiveness of American industries.

LICIT recommends that existing U.S. trade laws -- antidumping and countervailing duty laws, Section 301, escape clause (Section 201) actions -- be improved along the following lines:

1. Timely relief or remedy -- The trade remedy laws should provide for a timely response or, at least, a preliminary action to prevent additional injury from occurring during lengthy legal determinations;

2. Less burdensome causation test -- In many cases, the burden of proof on the part of a U.S. firm or union is very difficult to fulfill and more reasonable standards for action should be established (this is especially true for escape clause proceedings where the U.S. causation test is more stringent than the international standard in the GATT);

3. Certainty of relief or remedy -- If an affirmative determination is reached by the U.S. Government concerning a petition for action under our trade laws, there should be a predictability that action will be taken to eliminate the disadvantages confronting U.S. producers, either by changing foreign practices, where possible, or by fully offsetting the effects of unfair practices in this country;

4. Effectiveness of relief or remedy -- In order to ensure certainty of relief or remedy, the range of possible actions or responses available to the Executive Branch should be expanded so that discretion can be employed with respect to the choice of remedy or relief, but discretion should not be available for the provision of fully effective relief or remedy when an affirmative determination is reached; and

5. Reciprocity and third-market effects -- U.S. unfair trade practice laws should be made more effective in dealing with trade problems U.S. producers face because of unfair trade practices of government-assisted foreign firms in the home market

of the country concerned or in third-country export markets.

We believe that these criteria should be used as a basis for improving existing U.S. trade laws, especially the escape clause procedure (Section 201), the antidumping and countervailing duty laws, and the general unfair trade practice provision (Section 301). However, we would emphasize that these improvements in trade remedies alone will not be adequate to the challenge facing U.S. industries in international competition over the next decade and beyond. Trade measures are almost always reactive, responding to foreign economic developments--whether fair or unfair--and often after significant domestic injury has occurred. Our economic objectives and policy must be more anticipatory and directed by requirements of our country, and not defined solely by the responses required by the actions of others.

The older U.S. unfair trade laws (antidumping or countervailing duty actions) were tailored only to certain narrowly drawn, limited causes of action -- dumping or export subsidies. These laws were not designed, nor were they intended, to offset the newer and more extensive array of industrial policy measures governments use today.

On the other hand, Section 301, which is a newer law intended to allow a broader basis for action, contains too much discretion, so that offsetting measures are rarely applied. This unfair trade law should be amended to end the question of whether offsetting measures will be applied if unfair foreign competitive advantages do harm American industries and workers. Essentially, this change would make the administration of this law more like the antidumping or countervailing duty laws -- requiring a professional, investigatory determination of fact with a more straightforward application of appropriate measures if the investigation determines that the statutory criteria are met. A further change in this law should be made to depoliticize its administration by removing the requirement that the President must make the final determination in every case.

These changes in current U.S. trade laws can be effective in dealing with a range of unfair or disruptive foreign trade practices. But these laws are not effective in addressing the trade effects of increasing world competition based on industrial policies in other countries. What is required is a new cause of action to deal with the harmful domestic economic effects resulting from the international effects of foreign industrial policies, especially those which aggressively target export expansion. The next section of this testimony presents a comprehensive outline of legislation to meet this objective.

Before proceeding to that next section, we would like to emphasize that the members of LICIT have concluded that implementation of U.S. trade actions are not a wholly adequate response to the industrial policy competition of other governments. Other countries are unlikely to limit their industrial policy measures under the discipline of internationally agreed rules in the foreseeable future. Efforts to offset the industrial policy-derived advantages of our foreign competitors within the U.S. market will, in practice, be limited in extent and effectiveness. Therefore, LICIT has recommended that labor and industry representatives from various industrial sectors work together with government officials to review possible measures for strengthening U.S. industries. These measures include improving the environment for research and development; facilitating access to capital for new plant and equipment; conversion and restructuring assistance for industries and workers faced with rapid change; and renewal of public investment in the skills of American workers and the excellence of our entire educational system.

What is required is not picking "winners or losers" among industries. Rather it is a question of finding general economic measures to strengthen all of our industries, as well as industry-specific measures aimed at addressing the particular circumstances facing individual industries -- to improve their efficiency and to enhance their economic viability and employment potential.

Specifications for Trade Legislation to Deal with Problems Arising from Differences in National Economic Policies, Including Industrial Policies

Different countries pursue greatly differing policies with respect to industrial development. This can and does often affect trade and investment flows in ways that will require a U.S. response. Trade measures will rarely be an adequate or optimal response alone. In some cases, trade measures alone may be inappropriate. However, changes are needed in our trade laws to make them more effective.

Legislation should satisfy the following basic requirements:

(1) Declaration of Policy. The economic development and the international competitive

capability of American industries, including their trade performance is not currently a national priority. It will be necessary for the Congress to establish this industrial development priority by law, and give it effect in specific legislation in a number of fields, including trade remedies, education, taxation, training, etc.

(2) Information base. The U.S. Government currently lacks the information and analytical capability necessary to assess whether any public policy issues are presented with respect to the international competitiveness of any American industry. To remedy this, there must be created within the Government a sufficiently competent sectoral expertise to anticipate opportunities and/or difficulties and provide sufficient knowledge to permit the Government to participate intelligently with industry and labor in exploring appropriate solutions.

(3) Monitoring. It will not be sufficient to have an analytical capability. There must be an ongoing process of collecting information and preparing policy options where serious problems in international competitiveness are likely to arise. The declaration of policy suggested above must be supported by an active program of monitoring designed to detect problems as they are emerging so that earlier solutions are possible, and unnecessary confrontations with other countries are avoided. The announcement by a foreign government of a major industrial policy program should trigger an immediate investigation if there is sufficient likelihood that a significant adverse impact on U.S. domestic commercial interests will occur. It is ineffective to react once major damage is detected.

An immediate step in this monitoring process would be to send a 50-person team to Japan to collect information and analyze the industrial targeting practices of the Japanese Government, as well as Japan's programs to rationalize structurally depressed industries. This team should be composed of experts of sufficiently diverse capabilities (e.g., economists, engineers, lawyers and trade specialists) to be able to provide a sound assessment of the likely effects of targeting on American industry.

(4) Participation of private sector. The ability of the U.S. Government, acting alone, to

interpret either the significance of foreign programs or the competitive strengths and weaknesses of American industries will always be highly limited. The real expertise lies with the firms and workers who are actually engaged in production and experience first-hand the effects of foreign programs. Therefore, substantial support will be required of business and labor in any sector requiring attention. Where public policy measures may be required, a process should be activated to have a joint examination of the competitve status of the U.S. industry by government along with labor and business.

(5) Burden of proceeding. Once a major problem is anticipated, either as a result of the government's own monitoring activities, or due to information supplied by representatives of industry or labor, a serious investigation should proceed which will examine both the foreign industrial policies and measures as well as the factors affecting the competitive strengths and weaknesses of the American industry. Information as to foreign measures will only rarely be available to private domestic parties. The Government must have and utilize its own investigatory capability to obtain adequate information abroad. U.S. embassies can be supportive in this process, but a trade agency must have the independent capability of carrying out this assignment.

(6) Petition process. While it should not be necessary to provide a formal process to petition the Executive Branch trade agency for action, a simple unified procedure should be established in statute to provide accountability.

(7) Unifying consideration of remedies. Current trade laws focus narrowly on specific unfair practices (countervailing and antidumping), on broad conditions (201 import relief), or are diffuse catch-all provisions (Section 301). Legal causes of action, rather than a pragmatic problem-solving approach, govern consideration of the industry's difficulties. No current remedial provision causes an examination of both foreign measures and the U.S. industry's competitiveness. Nor is a range of responses provided under existing law that is likely to be adequate to the problems uncovered. If a problem of international competitiveness is raised, it should be examined without precluding prompt

application of statutory remedies. If an investigation reveals the presence of subsidies or dumping, countervailing or antidumping duties ought to be provided without a new, entirely separate investigation being conducted. The filing of a petition in trade cases should result in all appropriate tools being used as remedies.

(8) Organization of trade functions. The unification of remedies would probably be accomplished most efficiently through the unification of the trade functions of the Executive Branch in a single agency. Thus the analytical capability, the investigative resources, the decision-making authority would be combined in one cabinet-level department.

We have a public sector organizational problem in the implementation of trade and domestic policies. The focus of the Executive Branch in the trade area is on certain narrowly-drawn legalistic concepts. Responsibility on trade matters is parceled up among various agencies according to various trade statutes -- e.g., escape clause matters are handled by the International Trade Administration, dumping and countervailing duty actions by Commerce, and Section 301 actions by an interagency process directed by the Office of the U.S. Trade Representative. The way in which we have organized our Government to deal with trade problems, and more general industrial problems, is very ineffective and inefficient. Our priorities are wrong, and this is reflected in the organizational structure of our trade apparatus. We need an organizational structure that allows trade actions to be taken in the context of the overall economic conditions of the industry being affected. This requires a consolidation and coordination of functions now scattered throughout the Government. We understand that questions of reorganization of the Government are outside the jurisdiction of this Subcommittee. However, we believe that improvements in the trade laws must also be accompanied by improvements in the organizational means to implement those laws.

(9) Timeliness of remedy. In order to assure that investigations are conducted expeditiously and that consultative and decision-making processes are concluded in time to take effective action, time limits will be required. In order to facilitate decision-making, a preliminary determination should be published at the conclusion of the initial

investigative phase and relief measures provided at the earliest possible point in the process.

(10) Accountability. In order to specify when action is required, it will be necessary to describe in the statute the conditions requiring investigation, determinations, and provision of remedy or relief. In particular, the process of industrial targeting can be described with sufficient precision to require the procedures called for in the statute to take place. To maintain the integrity of an investigative process, freed from policy biases and political influence, the investigators must operate under a clear legislative mandate.

(11) Certainty of remedy or relief. Complete discretion would result in uncertainty that any remedies would be forthcoming. Therefore, once a preliminary determination were made that the statutory criteria were met, Executive Branch action would be required. Complete discretion would not be acceptable.

(12) Degree of Discretion. Complete discretion has proved unworkable, as demonstrated by the unsatisfactory record under Section 301. The dilemma posed by trade problems caused by differences in approaches here and abroad to industrial policy is that it will be difficult to specify in advance mandatory comprehensive remedies that must be applied if certain findings are made. It will be possible to require that dumping or subsidization uncovered in an investigation be countered within the terms of those statutes. But other trade measures will still require some discretion in how they are fashioned and applied to particular industries. Still, complete discretion would be difficult to accept. One compromise under discussion is to require a process of industry and labor consultation, which would include reporting to the Congress and the submission of legislation where Executive agency authority for tailoring remedies is inadequate (for example, under the fast track procedures of the 1974 Trade Act). The detailed program for any industry that would be recommended to the Congress would be left to this process.

Conclusions

Mr. Chairman, we have presented in this testimony specific suggestions for changing U.S. trade remedy laws based upon our understanding of the trade problems confronting American firms and workers today. We have also outlined the reasons that LICIT believes that trade remedies are inadequate to deal with many of the difficulties facing the industrial economy of the United States. LICIT believes that our country needs to have a policy framework where trade policy and domestic economic policies move in the same direction -- where they support and are consistent with each other. It remains to work out the details and mechanisms for accomplishing this objective. We feel that the following general principles can be agreed to now and would be widely supported:

-- government, industry and labor need to be involved together in the process of examining foreign industrial policies and their potential effect on U.S. industries, as well as potential measures for strengthening American industries;

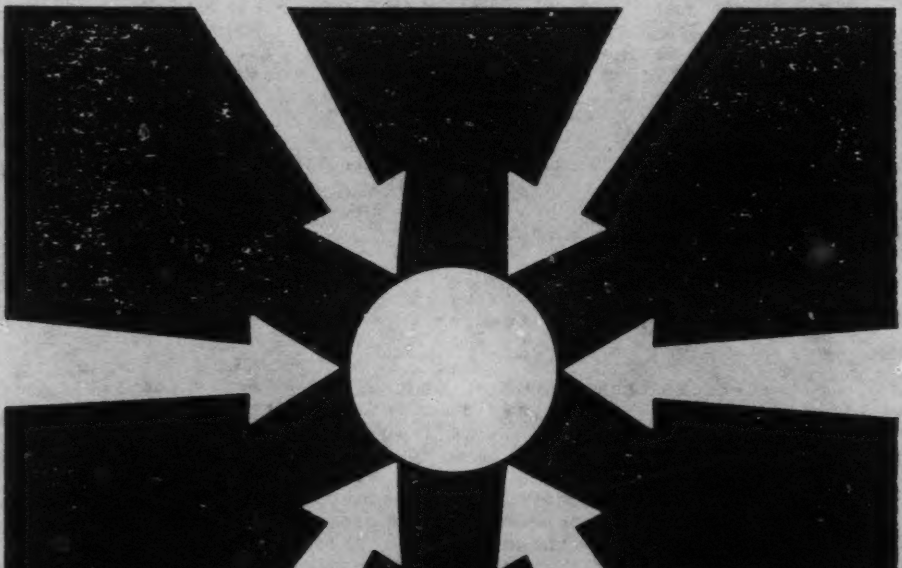
-- the primary objective is to establish conditions for the healthy development of American industry and jobs, not just the alleviation of current trade problems; and

-- trade and domestic economic policy actions need to be applied in a coordinated fashion to achieve this objective.

We understand that a number of the issues and suggestions we have made extend beyond the jurisdiction of this Subcommittee. In part, that is an illustration of the problem concerning the segmentation of U.S. policy development and implementation that LICIT believes needs to be changed. We hope the important work this Subcommittee is now engaged in by reviewing the adequacy of U.S. trade remedy laws can form the basis of these broader changes in the conduct of American economic policy we believe is necessary for the future prosperity of American industry.

Thank you, Mr. Chairman.

INTERNATIONAL TRADE, INDUSTRIAL POLICIES, AND THE FUTURE OF AMERICAN INDUSTRY



The Labor-Industry Coalition for International Trade

Executive Summary

America faces an international competitive challenge today unlike any that it has known in the postwar decades.

Lost jobs and sales across a wide spectrum of manufacturing industries in recent years have evoked greater attention to the relative loss of competitiveness of American industries in the world economy. In contrast to the United States, national governments abroad are increasingly unwilling to leave their industrial development to the private sector and the operation of the market. Many foreign governments use industrial policies, including trade policies, to assist specific domestic industries to restructure their operations and improve their economic viability or to become strong international competitors and increase their world market position.

The Industrial Policy Gap

The governments of Japan, France and West Germany, for example, have targeted a broad range of future growth industries for accelerated development and export growth and have also implemented programs to strengthen and improve the competitiveness of their older industries like textiles and apparel, steel and automobiles. Government assistance and coordination are offered to assure that new national industries achieve a substantial world market position. These target industries include computers and semiconductors, aerospace and commercial aircraft, nuclear power and other alternative energy technologies, machine tools and computer-controlled manufacturing systems, and optoelectronics and telecommunications.

This pattern of government orchestration of industrial development is being emulated by the governments of Brazil, Mexico, Korea and other newly industrializing countries. Targeted for special development and export support are steel, automobiles, textiles and apparel and industrial chemical products, as well as specialized segments of newer growth industries such as computer-peripherals, minicomputers, pharmaceutical products and commuter aircraft.

The United States has no comparable industrial policies of its own and no cohesive, effective policies to react to these actions by other countries when they affect U.S. producers. The gap between foreign and U.S. practices creates a major handicap that U.S. producers have to struggle to overcome by their own devices, in competition not only for foreign markets but also in our own market, the largest and most lucrative in the world. In the absence of effective U.S. policies, decisions of foreign governments are increasingly shaping the evolution of the U.S. economy.

This study seeks to define the key questions and to frame the beginnings of answers on the interrelated issues at stake here:

- What are the current trade and industrial policy practices of our industrial competitors, how do they differ from general U.S. practice, and what are the consequences of those differences in trade and industrial policy?
- What are the policy options available to the United States to redress such differences in levels of government support, how are these options interrelated, and which policy options should be adopted?

Targeted Industries Abroad

A brief overview of industrial policies in a number of important countries — Japan, France, West Germany, Korea, and Brazil — is presented in this study, along with case studies of industries where foreign industrial and trade policy measures have particularly disadvantaged U.S. producers: large electrical generating and transmission equipment, fiber optics, steel, petrochemicals, machine tools and robotics, telecommunications and automobiles.

The industry case studies and analysis of other countries' industrial policies describe programs other governments are implementing that have the effect of reducing the market share of U.S. producers in this country and overseas, thus cutting back on jobs and production in the United States. A few examples here highlight such practices:

- **Semiconductors and Computers - Japan**

The Japanese Government has launched an all-out effort to overtake and surpass the United States in the vital area of semiconductors and computers. In the 1960s and early 1970s, technology of U.S. companies was obtained by limiting foreign access to the Japanese market to technology licensing agreements only. Imports and foreign investment were prohibited except in very special circumstances approved by MITI. During the past 10 years the Government of Japan has spent over $500 million for subsidized research and development projects to develop basic and leading edge technologies in these two related industries.

Success-conditional loans and grants (repayable only if the project is profitable) are now provided to Japanese manufacturers for development and production of directly applicable commercial technologies. Tax relief is provided for actual production and then guaranteed markets are secured for Japanese producers through commercial policies that either directly restrict imports and investment or emphasize "buy Japanese" policies for government and private companies. Marketing assistance is also provided by a government-funded leasing organization for purchases of Japanese-built computers.

These efforts have already paid off in the semiconductor field as the Japanese have captured over 60 percent of the U.S. market for the most advanced high-density memory chip (64-K RAM). In addition, Japanese producers are making rapid gains in the U.S. personal computer market and are taking away market share in Japan for mainframe computers from U.S. companies.

- **Steel - Europe, Japan and Advanced Developing Countries**

Industrial policies concerning the steel industry have been implemented in Europe, Japan and the advanced developing countries. The result of this foreign government ownership and participation in steel production (30 percent of the non-communist competition that U.S. producers face is government-owned) has been chronic overcapacity in the world steel industry, depressing prices and profits as other countries protect their domestic markets and export at almost any cost.

Steel producers in Belgium, France, Italy and the United Kingdom are receiving subsidies equivalent to 13 to 26 percent of the value of their output, according to the U.S. Department of Commerce. Japanese promotional policies for its steel industry, including long-term loans from the Japan Development Bank, resulted in a steel industry which has installed capacity that is twice the size required to provide for domestic consumption. This has created tremendous pressures to export, even at prices that cover only variable costs. In many developing countries — South Korea, Taiwan, Brazil and Mexico — government ownership, special financing, tax incentives and trade restrictions have been employed to help develop a modern domestic steel industry as a matter of national choice.

HOWARD D. SAMUEL
President
Industrial Union Department, AFL-CIO

"American workers and American industry are profoundly affected by the stark contrast between foreign industrial policies and the lack of any coherent industrial development strategy in this country. Our government seems to live in a dream world where ancient theories of comparative advantage still rule international competition. That world—if it ever existed—has long since disappeared. We must recognize the national importance of American industry, and take effective steps to preserve it in terms of the realities of the current trading system.

There is no magic wand lying around which I can pick up to wave over our industrial sector to magically bring it back to life. But at least we ought to examine the roots of our competitors' success. First, government must acknowledge its role as a full partner in assuring economic growth and full employment. Second, we must couple macroeconomic measures with specific remedies aimed at meeting the needs of specific industries. Finally, we should enlist the experience and ideas of labor and business, along with government, in developing programs that work. Labor and business have much to offer, not just in times of bailouts, as an industry or company goes down for the third time, but on a systematic, continuing basis. Let's harness those ideas and that experience, and in the process build a viable consensus for action."

The result has been that many American steel producers have not had the funds or growing markets to support new investment in a broad range of state-of-the-art facilities.

- **Commercial Jet Aircraft - European Consortium**

The European Airbus consortium, a primarily government-owned venture of France, Germany and the United Kingdom, has successfully challenged U.S. producers of commercial jet aircraft. Having spent in excess of $5 billion to develop and manufacture competitive aircraft, the Airbus consortium then aggressively promoted their sale on world markets with subsidized export credits and effective political persuasion. These governments will continue to invest heavily in the Airbus program — the German Government estimating that it will have to spend over $1.1 billion through 1985 and the French Government budgeting $1.2 billion for the same period.

The success of this industrial program, and the effect on U.S. industry, can be seen in world market share figures. In 1975, before significant Airbus production, U.S. producers held 95 percent of the world's orders for large commercial jet aircraft. By 1981, the European Airbus had captured 26 percent of the jet aircraft market. The U.S. aircraft industry estimates that this decline in market share costs 255,000 jobs, $4.5 billion in reduced taxes and social security revenues, and a deterioration in the U.S. trade balance of over $2 billion.

- **Advanced Electronics - Korea**

In 1981-1982, the Government of the Republic of Korea, taking its cue from countries like Brazil and Mexico, implemented an ambitious national industrial program to increase domestic electronics and computer production significantly over the next several years. Laws were promulgated which prohibit the importation of every kind of mini-computer, microcomputer, personal computer and most peripheral units. Importation of medium- and larger-sized computers (mainframe) and advanced peripherals will be authorized on the condition that the supplier of the computer provides the Korean manufacturer with know-how and technology and assists Korean manufacturers in the development of a computer parts industry in Korea.

In addition to the restrictions on trade and investment and conditions on the transfer of technology, the laws provide the Korean Government authority to require domestic content from foreign producers, to provide direct subsidies to achieve the objectives of the law and to force joint ventures between foreign and local producers. The specific objectives of these policies according to the Korean Government are to: (1) produce large-scale semiconductors for mini-computers; (2) increase localization (domestic content) of basic materials from 15 percent to 85 percent; and (3) become the world's largest exporter of computer terminals.

Policy Recommendations

An activist U.S. approach is required to meet the challenge of international competition based on unequal industrial and trade policies. The "industrial policy gap" between practice in the United States and abroad has been widening and is spreading to an increasing number of industrial sectors, from traditional to the most technically advanced industries.

If the United States is not prepared simply to get out of the industries facing such unequal competition — in effect conceding to other countries whatever industrial sectors their governments choose to target — then this country faces three logical options: (1) applying measures at the border to offset

AMORY HOUGHTON, JR.

Chairman

Corning Glass Works

"The global marketplace is not a mirror-image of the American marketplace. In the United States we all operate under similar restraints. Elsewhere, laws governing trade vary according to national need and attitude. It is important—even critical—to keep this distinction clear.

In the real world each country has its own set of priorities. Each country has its own allegiance. I would like to feel that we would recognize that fact and in the process do two things:

1) *Take positive decisive action to protect our people, our jobs, our technology as other nations do for their own—without succumbing to the temptations of all out protectionism.*
2) *Avoid the idealism of how we would like to see the world work. That's another issue, another set of value judgments."*

the advantages conferred by foreign governments' industrial and trade policies, (2) taking measures to strengthen American industries, and (3) getting other countries to agree to a common discipline.

Our review of these options suggests the need for action in all three areas. No single option is likely to be sufficient to address adequately the international challenges facing American industry. Our government should undertake a strong commitment to action now and follow through in the following areas:

- effective at-the-border measures under U.S. trade laws should be implemented to offset the disadvantages experienced by American producers as a result of the industrial policies of other countries;
- take initial steps now and plan future actions to strengthen U.S. industries to maintain or restore their economic vitality and international competitiveness;
- an institutional capability for industry analysis should be developed within the U.S. Government to monitor domestic developments, industry-oriented policy initiatives in other countries, and likely future impacts on American producers and workers; and
- after taking these steps to improve U.S. trade laws and strengthen U.S. industry, the United States should prepare for future international negotiations toward common rules governing industrial policy measures which distort international trade and investment.

Recommendation 1:

Effective at-the-border measures under U.S. trade laws should be implemented to offset the disadvantages experienced by U.S. producers as a result of the industrial policies of other countries.

a. Existing U.S. trade laws must be enforced and implemented in a timely and effective manner.

Existing U.S. trade laws are often a poor match for the expanding array of industrial and trade policy measures used by other countries to strengthen their industrial sectors and international competitiveness. While aggressive enforcement of current U.S. trade laws could be effective against many of the distorting effects of other countries' industrial policies, such enforcement is not likely to occur without strong expressions of public concern including, perhaps ultimately, a clear Congressional mandate. The defense of U.S. commercial interests and of the firms and workers in America's industries must be a priority national policy.

b. **U.S. trade laws should be updated to directly address the disadvantages faced by U.S. firms and workers because of these foreign industrial policies.**

A more positive attitude toward enforcing existing U.S. trade laws needs to be complemented by additions to these laws to make these laws effective in offsetting the trade effects of foreign industrial policies. Except for foreign government subsidies that affect exports into the U.S. market, U.S. laws against unfair trade practices do not directly confront the trade distorting effects of other countries' industrial policies. The older trade laws (countervailing duty or antidumping) are inadequate. They are tailored to certain narrowly drawn causes of action. The newer section 301 contains too much discretion for effective action to be taken. U.S. unfair trade practice law should be amended to explicitly cover export-oriented, import-limiting industrial policies which have the effect of depriving American producers of market share and American workers of jobs. Important general improvements that should be made in U.S. trade laws include these objectives: timely relief or remedy before injury becomes too great, less burdensome causation test in line with international standards, certainty of relief or remedy rather than open-ended discretion, effectiveness of remedies to correct the unfair effects, and reciprocity and third market effects.

Improvements in U.S. trade law, however, must be accompanied by a commitment of the Executive Branch to strong enforcement of those laws, otherwise the changes in our trade law will have no effect.

Recommendation 2:

Industries in the United States should be strengthened to maintain or restore their economic vitality and international competitiveness.

The economic health and international competitiveness of American industries cannot be assured by measures which are solely reactive. Moreover, American interests should not be defined solely by the responses required by the actions of others. Steps will have to be taken to upgrade the industrial strength and competitive ability of U.S. industry if this country intends to maintain a healthy industrial sector.

We recommend as an immediate first step that labor and industry representatives from various industrial sectors work together with government officials to review possible measures for strengthening U.S. industries. These measures include improving the environment for research and development; facilitating access to capital for new plant and equipment; conversion and restructuring assistance for industries and workers faced with rapid change; and renewal of public investment in the skills of American workers and the excellence of our entire educational system.

What is required is not picking "winners or losers" among industries. Rather it is a question of finding general economic measures to strengthen all of our industries, as well as industry-specific measures aimed at addressing the particular circumstances facing individual industries — to improve their efficiency and to enhance their economic viability and employment. The costs of inaction will be far greater than the cost of effective actions taken in a timely manner.

Recommendation 3:

The United States Government should establish a sectoral research and information gathering capability to assess and evaluate industrial developments in the United States, the industrial policies of other countries and their potential effect on U.S. industries, trade, and employment.

In responding to the adverse effects of the industrial policies of other countries, the government is hampered by the lack of a timely and accurate assessment of information on industry-specific economic developments and the industrial policies of our major trading partners. The U.S. Government needs the expertise with which to assess what other governments are doing, and the implications for American industries, before major damage occurs to domestic firms, workers and communities. Representatives of labor and management should work with responsible U.S. Government officials and this analytical unit to assess the impact of U.S. trade, antitrust, R&D, fiscal and financial policies affecting different economic sectors of the American economy as well as the impact of the industrial policies of other governments on those same sectors.

Recommendation 4:

> **In order to work toward a future common discipline on industrial policies that can harm producers and workers in other countries, the United States should prepare for future international negotiations toward common rules governing industrial policy measures which distort international trade and investment.**

After taking decisive steps to improve U.S. trade law and to strengthen American industry, it may be realistic to pursue international agreement to regulate industrial policy measures that have trade and investment effects on other countries.

Achieving internationally agreed rules governing industrial policy measures which affect international trade and investment, however, will be difficult to achieve. Certainly, governments should accept the principle of not exporting unemployment through industrial policy measures. They should recognize that if all countries pursue similar industrial policy programs, then it is likely that no country will enjoy any positive benefit for jobs or sales. However, as the results of the November 1982 GATT ministerial meeting have underscored, successful international negotiations on a politically sensitive issue like industrial policy are just not possible in the current international economic and political environment especially when the United States has only limited bargaining chips to bring to the table. For U.S. proposals to win acceptance abroad, the United States will have to have a stronger bargaining position than it does today, when it is the only major industrial country not pursuing conscious industrial policies.

An international examination of the trade issues raised by the use of industrial policy measures would be a useful first step. The United States Government should seek consultations with its trading partners on the international implications of industrial policy measures. If, in the future, an international consensus appears to be emerging on the need for multilateral rules concerning such measures, our Government should be open to the possibility of entering into international negotiations. However, until the United States has strengthened its bargaining position for such negotiations, the pursuit of improved U.S. trade law and measures to strengthen U.S. industry will have to be the main instruments of countering the adverse consequences of other countries' industrial policies.

The Emerging National Debate

Urgent questions of employment and unemployment, national security, maintaining a diversified industrial base, and adjusting to ongoing technological change are basic reasons underlying the emerging national debate on the need for an industrial policy in today's more complex economy. Macroeconomic measures alone seem to be of limited effectiveness in assuring full employment and balanced growth. Moreover, international trade makes the effects of other countries' industrial and trade policies felt directly by our own economy.

We recognize that no review confined to questions involving international trade can provide a broad enough basis for deciding the issues now being raised in the debate over industrial policy for the United States. The rationales for industrial policy, as seen by its advocates, go far beyond the international trade dimension and the need to react to industrial policy measures in other countries. However, it is the hope of the members of LICIT that the issues raised in this LICIT paper will help to bring about a new consensus from the national debate about industrial policies, particularly on questions concerning the international environment. ■

Labor-Industry Coalition for International Trade Member Organizations

Bethlehem Steel
Amalgamated Clothing and Textile Workers Union
Communications Workers of America
Corning Glass Works
International Union of Electrical, Radio and Machine Workers
International Brotherhood of Electrical Workers
American Flint Glass Workers Union
The BF Goodrich Company
Industrial Union Department, AFL-CIO
Ingersoll Rand Company
International Ladies' Garment Workers Union
International Association of Machinists and Aerospace Workers
United Paperworkers International Union
United Rubber Workers of America
St. Joe Minerals Corporation
United Steelworkers of America
W.R. Grace & Co.
Westinghouse Electric Corporation
Weyerhaeuser Company

The Labor-Industry Coalition for International Trade, LICIT, is publishing this paper as the third in a series of studies designed to contribute to the national debate on important international economic issues that directly affect large numbers of American firms and workers.

LICIT is a coalition of industrial unions and corporations that was formed in 1980. The coalition is a voluntary association representing a broad spectrum of American industry and is not an official arm of any labor or business group. LICIT's charter states that the coalition "seeks to represent the common interest of American workers and American business in promoting increased, balanced, and equitable trade among all nations of the world. Without reference to outdated slogans of 'free trade' and 'protectionism' it will support adoption of government policies and industry practices which encourage open, fair competition for foreign products in the United States market as well as for American made products in foreign markets."

Chairman GIBBONS. Mr. Ong.

STATEMENT OF JOHN D. ONG, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, B. F. GOODRICH CO., ACCOMPANIED BY BRIAN TURNER, AFL-CIO, AND ALAN WOLFF, COUNSEL, ALL ON BEHALF OF LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

Mr. ONG. Mr. Chairman, I am John Ong, chairman and chief executive officer of the B. F. Goodrich Co.

Mr. Chairman, LICIT put forward a number of recommendations in the study "International Trade, Industrial Policies and the Future of American Industry," which you have been supplied copies of.

These recommendations address the need for better implementation of the U.S. trade laws and improvements in some of the provisions and coverage of those laws. The study also recommends the necessity of looking at trade actions in conjunction with other domestic economic policies aimed at improving the vitality and international competitiveness of American industries.

We recommend that existing U.S. trade laws be improved to insure the following objectives:

First, timely relief or remedy—the trade remedy laws should provide for a timely response. A remedy perfected in years of litigation is of little consolation in an international market of cut and thrust competition.

Second, less burdensome causation test—in many cases, the burden of proof on the part of a U.S. firm or union is very difficult to fulfill. More reasonable standards for action should be established. We do not believe that setting Sisyphean tasks for the petitioner is a substitute for due process.

Third, we believe there should be certainty of relief or remedy. If an affirmative determination is reached by the U.S. Government concerning a petition for action under our trade laws, there should be a predictability that action will be taken to either eliminate the disadvantages confronting U.S. producers, or to fully offset the effects of unfair practices.

Fourth, effectiveness of relief or remedy—the relief or remedies provided should effectively address the trade problem.

Fifth, reciprocity and third-market effects should be addressed. U.S. unfair trade practice laws should be made more effective in dealing with trade problems which U.S. producers face because of lack of access to the home markets of other countries or unfair competition in third-country export markets.

We believe that these criteria should be used as a basis for improving existing U.S. trade laws. Even these improvements however will not be adequate to the challenge of the next decade. What is required is a new cause of action to deal with the harmful domestic economic effects resulting from foreign industrial policies, especially those which aggressively target export expansion.

We have provided a comprehensive outline of legislation to meet this objective in our written statement. Our staff will be happy to followup with your staff with a more specific formulation of this if the subcommittee so desires. Let me, however, at this point just touch on one item from our list of specific suggestions in this regard.

We feel that our Government needs to establish an expert sectoral analysis capability for studying the effects of foreign governments' industrial policies and that we should actively monitor the creation and implementation of industrial policies by other countries.

Specifically, an immediate step in this monitoring process would be to send a 50-person team to Japan to collect information and analyze the industrial targeting practices currently being practiced by the Japanese Government as well as Japan's programs to rationalize structurally depressed industries.

This team should be composed of experts of sufficiently diverse capabilities, for example, economists, lawyers, engineers, and trade specialists, to be able to provide a sound assessment of the likely effects of targeting on American industry.

This suggestion, I emphasize, is not meant to indicate that Japan is the only one of our trading partners which requires such surveillance but only that Japan's currently successful industrial policy posture earns it the dubious distinction of first priority.

We would like to emphasize that our coalition believes that implementation of U.S. trade actions are not a wholly adequate response to the industrial policy competition of other governments. Other countries are unlikely to roll back their industrial policy measures under the discipline of internationally agreed rules in the foreseeable future. Efforts to offset the industrial policy-derived advantages of our foreign competitors within the U.S. market will, in practice, be limited in extent and in effectiveness.

Therefore, we have recommended that labor and industry representatives from various industrial sectors work together with government officials to review possible measures for strengthening U.S. industries.

Mr. Chairman, we have presented specific suggestions for changing U.S. trade remedy laws based upon our understanding of the trade problems confronting American firms and American workers today. We have also outlined the reasons that LICIT believes that trade remedies are inadequate to deal with many of the difficulties facing the industrial economy of the United States.

LICIT believes that our country needs to have a policy framework where trade policy and domestic economic policies move in the same direction—where they support and are consistent with each other. It remains to work out the details and mechanisms for accomplishing this objective. We feel that the following general principles can be agreed upon now and would be widely supported:

First, Government, industry and labor need to be involved together in the process of examining foreign industrial policies and their potential effect on U.S. industries, as well as potential measures for strengthening American industries.

Second, the primary objective is to establish conditions for the healthy development of American industry and jobs, not just the alleviation of current trade problems.

Third, trade and domestic economy policy actions need to be applied in a coordinated fashion to achieve this objective.

We understand, I hasten to add, that a number of the issues and suggestions we have made extend beyond the jurisdiction of this subcommittee. In part, that is an illustration of the problem presented by the segmentation of U.S. policy development and implementation, which we hope will soon be resolved.

We hope the important work this subcommittee is now engaged in can form the basis of these broader changes in the implementation of American economic policy that we believe is necessary for the future prosperity of American industry.

Thank you, Mr. Chairman. We would be happy to answer any questions that you or other members of your subcommittee might have.

Chairman GIBBONS. Mr. Bywater and Mr. Ong, I want to thank you for your statements. I have had an opportunity as you know to review the booklet you prepared on the International Industrial Policies and I think it is an excellent presentation. Of course we had an interesting session with your distinguished counsel, Ambassador Wolff, yesterday afternoon.

I first want to commend you as an organization for sitting down together and trying to work out what is our problem. That in itself is a fine step forward. It to me signals that we are going to be successful in finding a solution to our problems.

I recognize like you do that power to solve the problem is highly fractionalized in our Government and that that is one of the characteristics—for better or for worse and sometimes it is for worse—in the U.S. system.

But within the framework of what we are able to do I intend to proceed vigorously this year and in the future.

One of the purposes of the subcommittee trip to Korea and Japan was to make sure that there would be no more American shock to those two systems. We tried to tell them clearly that what we were intending to do, and that we assured them that if they had no problems with subsidies or violations of the General Agreement on Tariffs and Trade that they could sleep well. But if they weren't fully complying with those we intended to take affirmative action to make sure that they did not adversely affect us.

So I commend you for the very, very progressive and intelligent start that you have made on the solution to these problems. I want to yield now to my colleague from Pennsylvania, because he has another meeting he must attend.

Mr. Schulze.

Mr. SCHULZE. I thank the chairman for yielding.

I would like to echo the chairman's words, Mr. Bywater and Mr. Ong, I am pleased to see the progress you are making in the unified way that you are presenting it. I am happy that you are getting together. I think it is imperative that the labor movement in this country realize that management is certainly not on the opposite side of the table at this point, and we have got to do everything we can to stay competitive because it is a worldwide market whether we like it or not.

What we are going to have to do is try to keep that playing field as level as we can.

Along that line, last night I was giving a lot of thought to a lot of aspects to this but last night I was thinking about where we find violations, whether it is targeting, countervailing, dumping, whatever it is. We have to impose first of all—I would like to see penalties, first of all, which would be a deterrent, high enough and strong enough and bold enough that they would deter anyone from considering taking any of these illicit actions.

But yet we don't want them so onerous that they would actually deter legitimate trade. I wonder if you gentlemen or your organizations have given any thought to that question of penalties and what specific recommendations you may have along those lines?

Mr. ONG. Let me speak to that, Congressman Schulze.

As we said in our brief spoken testimony just a few minutes ago, we feel that there are two sets of things that need to be done with the trade laws at this point. One would be to tighten them up, if I can use that term, in some of the ways that I suggested in terms of speaking to the timeliness or the adequacy of the remedy. Beyond that, however, we really feel there needs to be added to the arsenal which the executive branch has to deal with this problem in effect a new cause of action, a new form of relief.

We have tried again in our written statement supporting this testimony to be very specific about what some of the elements of that might be. Just to speak specifically to the point you make of the severity of remedies, I don't think that we would disagree with you. Our feelings are that the remedy ought to be appropriate to the severity of the offense, if you will. On the other hand, there is no question that remedies in trade laws of this kind are in fact intended primarly to stop practices that are anticompetitive and violative of international agreements.

I think it is more important that the remedy be sure, once the violation or the unfair practice has been demonstrated, and that it be swift so as to have the maximum effect on the various people who are practicing it.

A penalty in my view—and I assume Mr. Bywater would join me in this—even if it were somewhat lighter, if it was imposed rapidly and certainly would probably meet our requirements better.

Mr. SCHULZE. I would probably agree with you if we had the test of the threat and not necessarily injury. Often what we are doing is locking the barn door after the horse is stolen and the penalty is too late at that point.

I feel it should be sufficiently high that someone considering taking one of those actions would not do it. If you are going to dump and you realize you will end up with a slap on the wrist, it is worth it. If you can unload this stuff and get out and keep your production going it might be worth it.

In my thought, I think we have to remove some discretion in levying penalties. We have to be sure just as criminal justice, if you have a sure penalty it is a little more of a deterrent.

I think we should eliminate some of the discretion involved with levying penalties and what was going through my mind was perhaps to back up a minute, it is often very difficult to find the degree of subsidization—as you have traced back through the transaction—so that we may not come up with an exact figure for the amount.

As a consequence, what I have been thinking about is treble penalties, you figure the amount there is, obvious amounts involved and triple it. That may sound harsh but it is a starting point.

I wonder if you have any thoughts on that?

Mr. **Ong**. We have not considered that, I must say. Although that would certainly be something the subcommittee might want to consider in the penalty area and we would certainly be happy to talk about it and convey our reaction and the reaction of the members of our coalition to the subcommittee.

We certainly very much agree with the need to move swiftly and the need to reduce greatly the amount of discretion that rests under current law with those administering it in terms of whether it will be enforced or not. I think that this timeliness question which you have put your finger on, Congressman, is indeed critical. It is one of the most critical elements.

It is for that very reason that in our recommendations for some fairly comprehensive changes in the current law we have stressed the need in our view for the law to require the executive branch to create an information base about what is going on.

One of our biggest problems is ignorance and the inability, until we are being hurt, to understand what is going on. We don't have an adequate predictive capacity, if you will. We think we need an information base developed by an effective trade administration organization and the kind of monitoring mechanism which I mentioned going so far as establishing an observation post in Japan manned by people who are expert in trade, expert in the industries involved. If we do this, the Government can understand what is in the process of happening before it happens. Obviously that gives us the best possible opportunity to move forward in a timely way and nip an unfair practice in the bud.

But if you have to wait until you are actually suffering the competitive effects and then go back without the proper data base and without proper organization and attempt to decipher what is happening, probably you are moving too slowly and too late.

Mr. **Schulze**. I couldn't agree more. I think if we get into the area of targeting we have to use the term "threat" or "potential threat" of injury or similar term to that.

I thank you gentlemen for your testimony. I thank the chairman for his forebearance.

Mr. **Bywater**. May I add something to that?

You are talking about treble damages, Congressman Schulze. I was part of the group that testified a little more than a week ago before Chairman Gibbons' committee on Compact and the threat to the industry, really it is not a threat, we are just about ready to go out of business unless something is done about it now.

The classic case there was a suit against the Japanese going through the courts and being compromised by the State Department, the Commerce Department, to the point where we would definitely have been satisfied with just what the original damages were without even having treble.

What it reduced itself to was something like 10 cents on the dollar, a slap on the wrist. If I were the Japanese I would continue to do that if I knew in advance I would only be charged 10 cents on the dollar for what I do.

You can make out like a bandit that way. So it was a problem.

I think the major point that just was raised by Mr. Ong, is the point we do need some expertise in Japan to observe what is happening. When they target a particular industry that is extremely important to us and we cannot wait until the horse is out of the barn, then it is too late. We don't have that kind of expertise now.

But the Japanese have thousands and thousands of their citizens really walking around the United States gathering information, sending it back to Japan and we don't have anything like that. Not only the Japanese but other foreign countries. We are the most open country in the world. I am all for that, I think we should be, but I think the others should be, too.

Mr. SCHULZE. Thank you.

Chairman GIBBONS. Yes, I would not want to destroy our openness, I would just hope they would open their markets and open the opportunity for us to understand what is going on to the extent that we do here. I think you make an excellent point there, Mr. Bywater.

I find very little to argue with you about in your testimony. I have listened a number of times to the general points that were made and would encourage our staff and your staffs to work in developing appropriate legislation.

One of the statements I made to our Asian friends was that we would develop legislation in an open arena here for everyone to have a chance to give their opinion and that we intended to stay within the letter and spirit of the GATT, the General Agreement on Tariffs and Trade.

I don't know Mr. Bywater, or Mr. Ong, whether you mentioned all your concerns about the ability of the General Agreement on Tariffs and Trade to handle the problems. Certainly that is a concern on the part of the committee, also. I know it is a concern on the part of the administration, and I regret that when Ambassador Brock went to the GATT ministerial in November that he was rebuffed by our other trading competitors. I hope that the next time we go there will be a little more incentive to cooperate and work together to solve some of these problems, not only in the area of high technology but in the area of agriculture, in the area of services.

Do any of you on the panel wish to elaborate more of what your concern is about the General Agreement on Tariffs and Trade?

Mr. WOLFF. Mr. Chairman, the General Agreement on Tariffs and Trade really was not designed to deal with questions of domestic policy by and large. It was primarily designed as you know to deal with areas at the border. Any attempt the United States has made, as you made reference to, the November GATT ministerial meeting, was really rebuffed by our trading partners by and large to extend the rules to the areas of increasing conflict, areas where there are few rules such as investment-related performance requirements, export requirements which the Labor-Industry Coalition has done a great deal of work on in trying to call attention to this kind of trade distortion.

Many areas of trade which currently other countries consider beyond the bounds of international regulation and discussion and I am afraid our view, our group has come to the reluctant conclusion that while plans must be made ultimately for multilateral negotiations and bilateral negotiations, it is unlikely that others will come to the table unless we first look after our own interests. Then if we pursue those interests appropriately and aggressively, others may have the incentive to talk with us.

But right now the outlook is very dim, indeed. There may be areas in which industrial policies fall. I think they do fall within or their effects fall within existing rules but the tools are limited. They have not been tested really. They don't go very far. I am talking about subsidies, Government procurement.

There are GATT tools available but they are not sufficient by any means and one has to wonder if one took a country to GATT on the subsidy practices where there were domestic aides, I don't know how one could be successful under the subsidies code when it is the United States that is considered out of step with the other countries.

So there is much that has to be done but very little willingness abroad now to come to grips with the problem.

Mr. ONG. Our view, I think, certainly, Mr. Chairman, is that GATT was a great thing and dealt in a meaningful way with problems that were facing world trade at the end of World War II. It does not speak as Ambassador Wolff has said, to many of the problems we face today. I believe our coalition stands for the principle that eventually it should be amended or supplemented in some way to make it more effective overall as an instrument for controlling world trade policies.

Our view is that this is probably not going to be the first thing to happen and that in the meantime many other initiatives have to be taken importantly by the U.S. Government to address the problems.

Chairman GIBBONS. Of course, when you talk to the Trade Subcommittee you are talking also to the Ways and Means Committee, and I am reminded that over the years, particularly in more recent years, we have tried to be responsive to industry-labor petitions to improve our competitiveness in the area of taxation.

Perhaps you are not prepared to talk about that today but I would like to raise some questions. One, is the depreciation or capcost recovery legislation that we have passed sufficient to meet the competitive requirements of the labor and industry sectors?

Two, the tax penalty for Americans working abroad—has it been properly resolved?

Three, do we need an effective program to encourage Americans, young people, to go abroad seeking employment in support of our own industrial operations and job operations?

Four, what other problems do you foresee that lie outside of the scope of the Ways and Means Committee that urgently need addressing?

That's four rather large topics. If you would like to expand on any of them I would be happy to listen.

Mr. ONG. I am not sure we have them all but Ambassador Wolff was taking notes. Let me try to address them.

Certainly we very much agree with you that there are a lot of domestic policy initiatives, many of which would fall within the authority of the Ways and Means Committee and they are needed in order to improve and promote the competitiveness of U.S. industry and that is at the heart of what we are talking about when we are talking about this country engaging in international trade.

Let me just say that I could tick off a number of specific areas where we feel initiatives are required. Many of these—such as the question of investment cap production by changes in the depreciation schedules—are very controversial. There are many parties with differing interests involved in them so that we are not making hard specific recommendations in every case.

I would just like to put them in the record to suggest the areas where we feel the Congress and this committee want to look.

First of all, we feel that promoting the creation of the investment cap, the subject on which you began your first question, is indeed important. That has been recently addressed by the Congress, as you mentioned.

I think probably the incentives to cap formation that were created by that legislation have been helpful.

That is not to say that additional and perhaps more specific legislation in the future, in this or future sessions, might not also be more helpful. Certainly this is an area where the governments of many of our trading partners are active in very specific ways providing special forms of loans, special forms of depreciation practice to give extra competitive advantage to their exporters.

A second area that we feel requires attention is the support of research and development by the Government through fiscal policy or some other way. Research and development for commercial use is very heavily subsidized either directly or indirectly in most of the other industrial nations in the world. That is not true here except to the extent that there is some indirect commercial value from defense-related research and development that is paid for by the Government.

We feel that, particulary in the high technical industries which have been targeted by Japan and a number of other major trading partners, the Government is going to have to become a partner with the private sector in devising ways to finance research and development which is, after all, one of the most high-risk investments that any company can make.

The third area I would mention is antitrust policy. This is a good and well-supported policy subset here in the United States. There are relatively few counterparts in other countries.

It does present specific and sometimes rather technical problems in terms of the competitiveness of our industry abroad.

I think examination of appropriate amendment of U.S. antitrust laws in order to make us more competitive beyond our own borders would be very much in order.

You mentioned the whole subject of education, and there again, we may be straying quite a ways from the jurisdiction of this committee but we feel that is extremely important in a number of respects.

Some of them are rather obvious like the necessity for training and retraining in the American job field. Many of these workers have been displaced by the practices which this subcommittee is now addressing, and those people obviously have to be repositioned to be able to work productively in other newer, different, higher technology jobs if we are to overcome the very severe unemployment problems we have.

But I think beyond that obvious educational issue there is the broader one of simply improving the educational system in this country. I would very much agree with the comment you made about the importance of providing increased sophistication and increased language skills for our young people.

Once again, in a smaller world, if you will, with more intense international competition, it is clear that the generations of workers and managers coming along behind us are going to have to have a lot of skills that perhaps we didn't require to be competitive, and knowledge of other countries, other cultures and specifically facility in other languages, is very important.

Let me see if I missed any points you raised.

Another specific question you asked with respect to tax penalties on American expatriots involved in promoting and caryring out our international trade. I think certainly the Congress has made good progress in addressing that problem which was a severe and longstanding one.

It is a specific, but as you are well aware, very difficult area to deal in.

I think that there it has been addressed, and I am sure there is perhaps need for some further legislative consideration but I think the actions that have been taken have been most fruitful.

Chairman GIBBONS. Let me ask this. Your answers bring up a number of other questions. Has your organization looked at the impact of the Domestic International Sales Corp., DISC, and the proposed changes that have been floating around Washington on that matter of tax policy?

Mr. ONG. We have not, Mr. Chairman. That has not been a matter that we have examined or that our members have debated. So we have no position on it.

Chairman GIBBONS. All right. I thank you for your very fine answers. I would hope that labor and industry would come up with some specific, proposals in the antitrust laws.

I would add that as a lawyer I never tried an antitrust case in my life. I don't remember studying it in law school. I say all that to explain my position that I don't know a lot about that law.

Since I don't serve on a committee that deals with it I have had even less chance to learn about it. But I hear complaints about it that I always have to say, well, if they were more specific perhaps I would understand it better.

I would hope that labor and industry can get together on a modification of our antitrust laws and begin to push in the appropriate committee of Congress—in this case the Judiciary Committee, I believe—for some modification of that law.

I know we have a misnomer that runs around called the Foreign Corrupt Practices Act that is also a problem. I wonder, have you all looked at those problems under the Foreign Corrupt Practices Act?

Mr. ONG. We have not up to this point, but as I indicated, we feel that problems in this area represent impediments to making American industry more competitive in international trade and you can be assured, Mr. Chairman, particularly with your encouragement, that that is going to be on our agenda in the future.

Chairman GIBBONS. As I talk to businessmen around the world, American businessmen around the world, they constantly mention these matters. The specifics of their complaints always get lost with me because I am not expert in the details of those laws. But where there is as much unanimity about the problem, I think we need to look at it. Some of that does lie partially within the jurisdiction of the Ways and Means Committee. We will have to look that over.

Mr. ONG. Having had that experience over the years as a businessman myself, that part of the problem is not just with the statutes as they exist, but also it is an organizational problem in that the Justice Department particularly does not have an international point of view, if you will, and does not tend to look at the application and enforcement of the laws in the context of international trade.

So here again, I think among other things we are faced with a problem of organization in the executive branch as well as with substantive provisions of the law.

I mentioned in my testimony earlier that we feel that among the problems we have in the trade laws is the manner in which the executive branch is organized to enforce them. And there again, I recognize we are going beyond the jurisdiction of this committee but you encouraged me to mention other things more broadly that could be helpful if there is anything pragmatic that we feel would be more helpful in addressing some of these organizational considerations.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

Mr. Bywater, Mr. Ong, thank you for your testimony. I am sorry I was not here when you commenced. I have had a chance to quickly peruse some of your suggestions. We had a sneak preview from Alan last evening as he testified on other matters, of course.

I know that you bill yourself as the Labor-Industry Coalition for International Trade. Yet you come in with what certainly would have been called a few years ago, when there were a few free traders around, a rather protectionist program.

You might explain whether you think it is? Is that a unfair characterization of your recommendations?

Mr. ONG. Yes, Congressman. I would have to say I think it is. We certainly do not view ourselves as protectionists in the sense in which that word is normally used.

Speaking personally, I view myself as an advocate of free trade. I think our cause, if we can sum it up, is that we believe in free trade but at the same time, fair trade.

Mr. Bywater may want to add his thoughts.

Mr. BYWATER. I would like to say, first of all, Congressman Frenzel, we are not looking for a Christmas tree approach to legislation. We are looking to at least get a fair shake out of international trade issues and at present I think it should be obvious that—to everyone in Congress, anyone who knows anything about international trade—that the American market is wide open and the other markets around the world of the major countries are, in many respects, closed.

Certainly the Japanese, I would have to say, are the number one country that has taken advantage of protecting all of their home industries and protecting themselves against our imports. We would sell to the Japanese many of our products, manufactured products, products from the farm, and it would be cheaper for the Japanese than what they presently sell in their country. That is repeated elsewhere in other countries.

We are here as a Coalition of Labor and Industry to say, "Congress, give us a fair shake."

That is really what it comes down to. I don't want to oversimplify it but, frankly, I don't see anything else I could come up with as a slogan than to say a fair shake, because we are just not getting it. We can't continue to give away our jobs and allow the other countries to do anything they please and make up their own rules and just take over our markets. That is really what it comes down to, Congressman.

I think it is a serious problem. We have high unemployment now, highest since the Great Depression. Certainly we have to look at the problems that we have internally and the Japanese do not have anywhere near the problem that we have.

Mr. **Frenzel.** Well, I thank you. We have got an open market, everybody else is closed. Do we have an open market in steel, open market in automobiles, open market in textiles, open market in agriculture? If you can answer that question you perhaps know a good deal more about trade than I do.

I would like to know what is so open about our market in those respects?

Mr. **Bywater.** What is open in our markets?

Mr. **Frenzel.** The import of automobiles is frozen in place because we insisted. You said the other countries make up their own rules. Looks like we have been making up our own rules lately.

Mr. **Bywater.** Well, Congressman, I am not here to try to propose changes in that type of legislation at this time. I am not here for that purpose.

I have an opinion on that which I would not care to discuss at this time. But at the appropriate time on the appropriate committee I would discuss it.

I think right now we are trying to get some relief in an area that we are trying to confine to just a few items. As I said, we are not trying to impose on this committee the Christmas tree approach of legislation. One of the things that perhaps you weren't here to hear, Mr. Ong gave his version of what we want to put across in terms of monitoring what the Japanese are doing. We talked about having 50 experts in Japan to monitor Japan and when the Japanese decide to target an American market our experts should be over there to help save our industries and keep the Japanese from violating trade acts as they are now.

Mr. **Ong.** Congressman Frenzel, I would like to speak to that because I feel it would be wrong to leave the impression that perhaps we are trying to blur over or cover up some signs on the American side and concentrate our sole attention upon misdeeds of our trading partners.

I would submit to you that while there have been specific political reactions, if you will, which have resulted in direct or indirect artificial interruptions of trade into the U.S. market—you mentioned, for example, the current restraint on the part of current Japanese automobile manufacturers and their imports to this market—those represent in their totality a very small phenomenon in international trade and for the most part they have been the result of great political debate aroused by the considerable disruption that imports were making in a particular industry and thus in employment in a particular part of the country.

The fact remains—and I don't believe there is any fact to shake this—that the United States remains the largest and most open market for foreign exports anywhere in the world.

That is true about automobiles. If it were not, certainly foreign-made automobiles could not command the current roughly 30 percent market share that they have, a market share which I would remind you has risen from something like 8 percent a few decades ago; nor could foreign foodstuffs be able to come into this market and compete as they do and manufactured goods in virtually every sector.

Sure, from time to time there is a human cry for import restrictions and for heightened tariffs on a sectoral basis and sometimes those initiatives are listened to in this Congress and by the executive branch and as a result temporary, normally temporary, and partial barriers of some kind are raised.

Sometimes some of our trading partners become alarmed and engage in temporary self-restraint out of fear of some more sweeping protect[illegible]tion.

That is precisely what we are here talking about. That is precisely why we aren't protectionists. I made a speech last week in Steubenville, Ohio, [illegible] of which was made very much upon the testimony kind [illegible] have been saying to you this morning and that is a community which is wholly dependent on the steel industry, has something like 18 percent unemployment. I was lucky. It was a very polite audience. No one threw any cups or saucers at me. Quite a few people came up afterwards and said, "Gee, we have never heard anybody say that before."

They have had a string of speakers in there representing various opinions in this country who had been talking about absolute import bans, who had been talking about Smoot-Hawley tariffs, if you will.

If you feel that our voice is a voice of immoderation and protection, I would suggest to you that there are others far less moderate than we.

Mr. **Frenzel**. I have to concur in that judgment. It is just that I see what used to be a coalition for an open trading system withering away and probably being eroded by the forces of unemployment and inflation and noncompetitiveness and other factors.

I am just a little concerned that your suggestion may be taking you farther in that direction than I would have expected.

May I talk about one particular suggestion and that is where you would like to take away the President's discretion in some relief action. I assume you are proposing simply having either the ITC or the Department of Commerce or the particular agency making a final decision without presidential discretion or apparently without review of any kind.

Do I understand the nature of your suggestion correctly?

Mr. ONG. No. I think that overstates it a bit. We would not advocate removing completely that element of discretion. We understand that there may be legitimate reasons for having some discretion there in the interest of conducting an effective foreign policy and the like but we feel that that discretion should be circumscribed, limited, and made subject to some more definite standards or definition.

Mr. FRENZEL. A number of groups have come in and said there is no certainty and I guess by that it means that they don't seem to be sure of winning. Other groups are nervous that if they win it will be a big victory and markets will have already have been lost.

I think what we need is a little more focus, a little more specific suggestion of exactly how we modify these relief laws. We have had suggestions to change 201. We have had suggestions to change 301. We have had suggestions to change antidumping and countervail.

I guess we are trying to focus on what most needs to be changed so we don't have to get into a whole basket of remedies and dicker around with them a little bit.

What is the one that you really need to have changed to do the job that you think is necessary?

Mr. ONG. We feel, and we have, of course, presented our views in detail in the written statement which we submitted with our testimony, that there is a need to change some of the existing laws, 201, 301, countervailing duties, dumping and so on. I would say, Congressman, in response to your question, that we feel that there needs to be added to the law a section which would provide an expanded capability to track what is going on in the world of international trade and to provide the administration, the executive branch with a wider and more flexible array of remedies which it could very promptly put into effect as soon as any interested party has been able to establish the existence of an unfair practice.

I think perhaps as much as anything else, this would prove helpful.

You mentioned the erosion of the free trade coalition and I certainly understand and agree with you that we have seen that phenomenon and are seeing it.

I would suggest to you that that erosion is due largely, it has been aggregated by the unemployment problems, the recession and so on, but I would suggest to you that the erosion of that coalition, that concensus is due largely to the demonstrated ineffectiveness of the Government in dealing with very blatant examination of unfair trade practices which were destroying U.S. industry and I take you back 7 to 10 years ago and let's talk about the color television industry.

I think there it is very, very clear, dramatic failure of our system under the laws as they are now written. To deal with that immediate danger was the thing which began to cause a lot of members of the coalition, if you will, to scratch their heads and wonder whether they were really quite such free traders after all.

I feel that we need to have in the law a process whereby, whether acting on its own information or on information provided by a union, a company, some other interested party, the Government could move very rapidly on the basis of an existing base of information which they would have about activities going forward in the other industrial countries to bring a petition.

And once the violation or unfair practices had been factually established that the law would allow the administration, the executive branch to choose from among the various remedies which are currently available and select among those on a free basis without any further legal delays, without starting over, without repetitioning, take whatever remedy was effective in curbing the practice involved and apply it. Apply it quickly and firmly.

Yes, maintain some discretion but, again, circumscribe that, define it. Make it subject to a higher burden of proof, if you will, on the part of the administration.

Mr. **Frenzel**. Well, I thank you both for your testimony. I am particularly pleased to see you testifying together. For those of us who go around the world and see management and labor cooperating rather than confronting each other it is sometimes discouraging to come back and see that that isn't happening in the United States.

Whatever recommendations you make, simply the fact that you are working together, I think argues well for our future. Thank you both.

Mr. **Bywater**. Thank you, Mr. Chairman.

Chairman **Gibbons**. I have a followup.

You mentioned the need to put investigative forces in the field and while we haven't tried that per se, we have tried it a number of other ways and I have been discouraged about how it has worked. It is kind of like trying to push a string. We become discouraged with Treasury's enforcement of the countervailing duty laws, and we took it out of Treasury and placed it over in Commerce.

We tried to set up a service in Commerce to assist in overseas branches of our embassies in expediting your business complaints and opening your business opportunities and we have been far less than successful in that regard.

Now, if we are going to send somebody overseas to investigate industrial policy, where in the U.S. Government should we place this responsibility? Should it be in the Commerce Department? Should it be in the State Department? Should it go back to Treasury again? Should it be in the Labor Department? What about the Agriculture Department? What about the International Trade Commission?

Mr. Frenzel and I have been the principal investigators so far around the world. It has been an interesting experience but we are not totally equipped to handle that job.

Mr. **Frenzel**. We are running out of pages in our passport book.

Chairman **Gibbons**. So what do you think we ought to do?

Mr. **Ong**. Mr. Chairman, you are, of course, putting your finger again on one of our problems and that is the organizational one. As you know, we would advocate that the Congress take a look at the total way in which the executive branch is organized to conduct our affairs in international trade. But let's put that to one side since that is a world we don't know about and let's just talk about the world as it exists today.

Obviously there is not a clear right answer but I guess our view would be if we had such a mission today and we certainly advocate that you consider establishing it, it would most logically fit within the organization of the U.S. Trade Representative and should report to him to be a part of that organization.

We also would hope, I might say parenthetically, that that initiative would be selected after consultation between our Government, industry and the labor movement in this country so that an effort could be made to attract and recruit the very best people, those with the best capability for doing the kind of work we have in mind.

Chairman **Gibbons**. All right. I can see the next President of the United States, whoever he may be, saying I have got 60 or 100 more people in the Executive Office of the President. That is a problem we have. The USTR is a creature of the Congress and various Presidents, beginning with Kennedy, have resisted the USTR being in the Executive Office of the President. Particularly those young eager beavers who take over every time we have a transition team come on for a change of power always seem to think they are going to run it out of the Executive Office of the President. It takes a few years of persistence to make sure that their recommendations to run it out are not carried out.

And that is one of the problems we face. That is not a question. I am just kind of philosophizing having lived through a few of these changes of power.

Mr. **Frenzel**. If the chairman would yield, I am reminded there are about 120 people in the Department of the Trade Representative and there probably are 50 times that many in the ITA over in Commerce and yet, whenever anybody comes in here and wants this kind of work done they always suggest that it be done by STR.

And I am wondering if there has been sad experiences in Commerce or what. And I suppose there are more janitors sweeping out economists offices in the Department of State than we have total employees in the STR.

If the chair will continue to yield, is there some reason why you shy away from Commerce in this regard?

Mr. **Ong**. I don't really feel we want to be drawn into the debate about the relative merits of various parts of the executive branch although I am sure there is a subject for debate there.

But the chairman asked me the question and I think our feeling is, based up on our experience with the USTR people and also based upon the role which they have been given by the Congress and which they are trying to fulfill that would seem the most logical place for them.

I might say that it may even be that as people in private organizations, we have some prejudice for smaller, leaner organizations as places to get things done. Also, while we are advocating 50 people for this mission I will confess that that is a somewhat arbitrary number but I wouldn't want to leave the impression that it is by any means excessive.

The French Government, for example, I think maintains in this country some 200 people as commerce representatives. I am sure that you could find simila statistics with all of the other major industrialized trading nations.

So what we are talking about is we think important but it still would be a relatively modest force to field.

Mr. **Frenzel**. Thank you very much. I thank the chairman for yielding.

I would note only that the French need to work harder to maintain that negative balance of trade with us.

Chairman **Gibbons**. Well, you all have been very helpful and I encourage, with all my strength, your further cooperation in working together and helping us solve these problems. Thank you very much.

Mr. **Bywater**. Thank you, Mr. Chairman.

Mr. **Ong**. Mr. Chairman, we thank you. We would like to commend you in turn. This committee has embarked upon very important work and we know you are aiming at prompt legislation. We certainly applaud that and if there is anything more we can do to help let us know.

Chairman **Gibbons**. Thank you, sir.

Mr. **Ong**. Thank you.

Our next group of witnesses constitutes a panel who are all appearing here in their individual capacities.

Mr. Harris, Mr. Hemmendinger and Mr. McCauley, if they would please come forward.

STATEMENT OF HERBERT F. HARRIS II, HARRIS, BERG & CRESKOFF, WASHINGTON, D.C.

Chairman **Gibbons**. Mr. Harris, I wish you were up here with us. We miss you here. I might say you look 10 years younger, though, since you have retired.

Mr. **Harris**. It is a better life, Mr. Chairman.

Chairman **Gibbons**. There is a better life outside of Congress?

Mr. **Harris**. Yes.

Chairman **Gibbons**. Well, all joshing aside, Herb, you do look fine and we are glad to see you here and we are glad to have you join with your other colleagues to come here and help us with these problems. We recognize all of you are experts.

I will start off with Mr. Harris first and then we will go right ahead.

Mr. **Harris**. Mr. Chairman, thank you very much for the privilege of appearing here and especially for the privilege of appearing with experts that qualify as old hands here in Washington.

I sometimes kid in the law firm when I start talking about ancient history and trade law but I don't think I can do it with this panel.

I would like to mention, though, that I am celebrating my 28th anniversary of testifying before the Ways and Means Committee. I testified before this committee in March 1955 on something called an antidumping law. In case we think that trade remedy laws and difficulties with respect to them is something new——

Mr. **Frenzel**. You must have been a drummer boy recruited at age 7.

Mr. HARRIS. I remember it so well if I may say, Mr. Chairman, because the chairman of the committee at that time, of course that was back in the days when you didn't have Subcommittees of Ways and Means, you only had full committees. The chairman of that full committee at the time was a gentleman by the name of Jere Cooper from Tennessee. There were two rising stars on the committee at the time by the name of Wilbur Mills and Hale Boggs but they were not chairmen at the time.

I would also like to point out that on the panel today and as we worked hard on the Act of 1962 was Mr. McCauley. Mr. McCauley, of course, had a distinguished career as the staff person on the Ways and Means Committee for trade at the time.

He remembers some of the hectic times that we went through in the Act of 1962. Having indulged in that much nostalgia, Mr. Chairman, I would like to point out that if you combine the history with the technical knowledge that I am exposed to in my law firm with a lot of folks, especially with my senior associate Linda Potts, who is from the Department of Commerce, you run into the conclusion that we do need major modifications with regard to our trade law if we are going to deal with the real world of trade as it exists today.

The term targeting is more than just a term or a popular phrase of the time. It is going on and as soon as you go out into the real world of international trade you see the process of targeting pursued.

You have the sectoral subsidization that seems to be extremely vicious at this time with respect to certain industries. They include infrastructure, exemptions from taxation, Government export loans, preferential rates and cheap money for investment and new technology. The targeting is a two-phased process. The industry in the home country is picked and they say that is the industry we are going to expand. That is the industry we are going to establish. The market is targeted. It says that is the industry we are going to go after in a fairly predatory sense, in the country of the targeted market.

There are many reasons why a country makes this decision. A country makes the decision on the basis of sometimes defense goals and sometimes full employment, expanding GNP and sometimes just for the simple reason that this is the way they perceive of getting foreign exchange.

Whatever the reasons, and some of them may be very valid from their national policy standpoint, the fact of the matter is that they are victims and those victims are oftentimes in the American industry that hapens to be in a market that is open and available for that type of penetration.

The fact of the matter is that when this targeting goes on, we have developed, certainly since World War II, the process of nationalization of those key industries. I am not just talking about transportation or power industries or what have you.

I am talking about the nationalization of most of your basic industries. For example, I am advised that in Italy, the industries representing 75 percent of its GNP have been nationalized.

It is difficult, indeed, it is impossible to deal with institutions like that if, in fact, we have no method of directly restricting in an expeditious manner any nationalization that they may have designed.

There are alternatives to the nationalization and many countries use it. We have seen firms subsidized directly by the Government. It is familiar now in steel and shipbuilding; consumer electronics, and automobiles; and now the Committee has been inundated with evidence of such subsidization in the high tech arena.

It is usually designed to go after a product line after that product line is dominated. Then you expand into other product lines until finally you have devastated an industry. You then see a frightening thing. That is the foreign industry that has dominated that market, in the United States, for example, coming over and saying: "I will tell you what, this industry is in such distress, we are now going to buy it out in order to help keep employment going in the United States."

We happen to have direct knowledge and interest in the fact that recently the Korean steel industry, the Pohang Iron & Steel Co., was in this country looking for a steel company to buy out in an industry that is probably 90 some percent government-owned. They have penetrated this market sufficiently that now they feel in some areas they would like to own it directly.

You are talking about price differentials now, Mr. Chairman, that are not 10 percent or 15 percent price differentials. When they go in on a targeting operation you see evidence of price differentials as high as 50 to 70 percent. Against that sort of predatory action the domestic industry can try to meet those prices, sell below cost, basically generally debilitate themselves, or they can just give up and go out of business.

One of the responses to this can be, will this increase U.S. subsidies? Let's beef up the Eximbank another $6 or $7 billion of export subsidies, then maybe we can handle this.

Then the next step after that is, what about our own U.S. market? Maybe we had better have a program to subsidize those industries in the U.S. market that are having to compete against that unfair competition.

I suppose if we had a program like that we would not have Canadian railroad cars in the subway system in New York today.

It seems to me to be a difficult way to go, as far as policy is concerned, but many may think it is essential.

May I say that our group would be happy to outline our thinking as to amendments that are necessary with regard to the dumping and the countervailing duty laws, but I would like, before I return to my colleagues on the panel, to underscore one really important difficulty we have in the subsidy area today and that is something that some folks have called upstream subsidies. Sometimes it is a misnomer. It is a very direct subsidy. But the fact of the matter is that under existing law it has been interpreted, in my opinion at least by the Commerce Department that they cannot reach those upstream subsidies. This has been a signal to the world, again in my opinion, that there is a way to subsidize your exports to the United States and that under the strictures of the laws and the procedures that are existing there is no way to reach those upstream subsidies.

Chairman **Gibbons**. Excuse me. I am not familiar with the term "upstream subsidies." Would you elaborate a little?

Mr. **Harris**. Well, let me use a specific example. You have an industry that is in the fabrication business. It may take wires and bend them around one another and make something called steel wire rope.

You may be able to look at the foreign government and count the subsidies that it is giving that particular industry. That particular industry needs a raw product. In this case, for example, it might be high carbon steel wire rod. They may be getting that steel rod from a nationalized steel industry in that country. They may be getting that steel rod at half its actual value as determined by the world market.

The wire rope producers are obviously subsidized and they are getting it from a government-owned enterprise. Now, that product may be subsidized by 50 percent. The product may represent 50 percent of the value of the product they are selling and, therefore, you are looking at something that is really a 25 percent subsidy.

Yet our Government seems to be saying that under the countervailing duty law as is, in fact, the industry competing against that product, wire rope, goes in and says: "Look, they have got a 25 percent subsidy through the integrated steel company." If, in fact, they do that, they are told: "no, we can't reach that subsidy".

This, I think, is a very basic problem and I would suggest it needs to be handled rather expeditiously.

We would suggest that you can handle it through section 301. The countervailing duty laws does not deal with this real method of subsidizing fabricated products.

May I just mention one other thing. If we are going to have relief there has got to be a time limit. I think there are methods to delay relief under existing law. I know Congress has done as much as it feels is appropriate in trying to expedite it, but there ought to be ways of hastening relief.

I would make an additional point. Mr. Chairman. There should be a point where the burden of proof, changes. Industry or individual enterprise in the United States can do a certain amount in hiring consultants and enduring expenses to try to establish what is going on in that foreign country.

I would say that after a prima facie case is made it is time for that foreign country to start proving that they are not actually engaging in the practices alleged, and I think that that shift of the burden of proof becomes very important.

I conclude by saying that I think we need a new remedy. It has probably been mentioned to this committee before but it becomes more and more apparent. You can go in and say, look, this country is dumping. Look, this industry is being highly subsidized and causing great injury in the United States. Basically you are dealing with the facts after they have happened, after an industry has been injured, after investment has been retarded.

I think there ought to be a way for that industry to bring a civil action if they can demonstrate such injury and damages resulting from unfair trade practices, and, if I may say to my friends on the committee, to receive single damages or, if intent is shown, to receive treble damages.

The act of 1961 tried to establish this fact under the dumping law. Currently, there is a civil damage remedy when intent is established, but it is almost impossible to establish that intent.

I would say a small modification of that act allowing single damages rather than treble damages when injury is demonstrated to result from the unfair trade practices would be a great improvement. If you can create an environment thereby that would permit U.S. industry to survive, I believe that industry will show its metal in such an environment. I hope we would see a rather quick action on these trade remedy laws to help facilitate recourse for U.S. industry.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, Mr. Harris.

[The prepared statement follows:]

STATEMENT OF HERBERT E. HARRIS II, HARRIS, BERG & CRESKOFF, WASHINGTON, D.C.

SUMMARY

I. The targeting of a U.S. product market by foreign firms, carried out primarily by use of subsidies, is a practice which has not been adequately dealt with under the U.S. countervailing duty law.

(a) Revision in U.S. trade remedy statutes is necessary to ensure that subsidies which violate international Subsidy Code and GATT commitments can be redressed under the U.S. law.

(b) This is necessary to protect both United States and fair trading foreign firms from unfair competition in the U.S. market.

II. New legislation also is necessary to provide a private remedy to U.S. firms to enable them to recoup losses to unfair competitors.

(a) Return U.S. firms to the status quo ante.

(b) Absent such legislation, U.S. firms will not be able to receive damages for the losses occasioned by unfair trade practices and will lose any opportunity to compete effectively in the technological race so crucial to our industries in decades to come.

STATEMENT

During the post-war periods, we witnessed the creation of a new world trading order, and with it, raised hopes that American efficiency and ingenuity would lead this country successfully into markets previously closed to it. Almost thirty years after the creation of the GATT, some among us are stunned to find, not only that the world trading system that the U.S. took the lead in establishing has not lived up to our expectations, but that, in fact, our economy is in serious trouble because of disparities in the way GATT parties have applied—or ignored—the free trade principles of GATT. Particular sectors of our economy are perilously close to the brink. Almost as we strive to create this free and fair world trading system, plans were underway to sabotage it. The most ominous sabotage effort is sectoral subsidization. This phenomenon is not new. But our perception of the grave consequences this practice has for American industry and workers is new. These sectoral subsidies generally include infrastructure grants, discounts on energy, transportation and insurance rates, exemption from taxation, government export loans at preferential rates and cheap money for investment in new technology, to name just a few. The practice is called targeting. It is a term you're likely to hear more often. It has a two-sided meaning. On the one hand, a foreign government targets one of its industries for expansion, and on the other hand, it targets some other country's market for the distribution of the production of the targeted industry. Targeting can be relatively broad or very narrow; it can involve the creation of a whole new industry or the rejuvenation and expansion of an old one.

The objectives include a desire to attain self-sufficiency in material necessary to strategic defense goals, or to increase employment, GNP and needed foreign exchange. In countries poor in many natural resources, one objective may be to acquire foreign exchange to purchase natural resources while establishing industries less dependent on those thin resources and more dependent upon technology. Whatever the objective, and no matter how defensible or even laudable the initial objective, targeting always leaves in its wake victims, which are those companies already producing the targeted products and located in a market having little or no trade restrictions. Some industries in the United States often are hit hardest by the practice since they have been producing for a very appealing mass market and because our government has done more than any other to open its borders.

Not only are U.S. companies the victims at home, but abroad as well, since governments fostering targeting are interested in expanding into all export markets open to the products in question. And U.S. companies are not the only losers in the battle for the American market: unsubsidized competitors from other countries also suffer loss of sales in America. Thus, targeting has an anticompetitive impact both here and abroad, and is, in fact, an unfair trade practice perpetrated against legitimate third country exporters. Our trade laws and trade policies must make very clear that we will not tolerate the demise of American industries, nor will we permit ourselves to be forced into protectionism, because of the unfair trade practices or renegade trading partners. We should ensure that both American and fair trading foreign companies are free to compete head-to-head in our market. Neither can do so where some are permitted to engage in predatory tactics in our country.

Targeting creates carved-out, centrally-planned sectors, and generally results in the creation of over-capacity and cut-throat pressures exerted in both the American market and the world market. It is sometimes accompained by nationalization of the targeted enterprises or at least the upstream suppliers of important inputs for the targeted enterprises.

Alongside this post-war development, we have witnessed a significant increase in state ownership of manufacturing enterprises. The post-war growth of state ownership of manufacturing enterprises in non-communist countries has been dramatic. In Italy, for example, state-owned enterprises are now responsible for approximately 75 percent of that country's GNP. Growth of state ownership on France and other western nations is also apparent. Why? Because governments tend to nationalize three types of industries: lucrative, strategically important industries (OPEC oil); very weak industries (British Leyland); and new industries which form the backbone of a government's industrial policy plan (Korea's Pohang Iron and Steel Company).

We note, for instance, that when the Mitterand government announced its intention to take over Rhone Poulenc, it limited its plans to those divisions which were the biggest money losers and in danger of undergoing liquidation. Once an industry becomes profitable, there is a tendency to sever its affiliation with sovereign and return it to private hands. It is important to note that the industries subject to recent government takeover have not been the traditional service industries like transportation and communications, nor have they always been strategic military industries; rather, they have often been industries producing manufactured goods destined primarily for non-military applications.

In some countries, however, government has not assumed the direction of industrial growth by nationalizing or even buying stock in private companies, but by subsidizing private firms. Once again, objectives include acquisition of foreign exchange, full employment, and across-the-board economic growth.

Targeting may occur with or without government ownership of industry. There exist today graphic examples of successful targeting without formal takeover of enterprises. The progression is now familiar to us. We have seen it in steel and shipbuilding, consumer electronics, automobiles and now in the high-tech arena.

First, a government insures a domestic market protected from competition, which serves as a test market and provides a financial base. This may be accomplished by constructing tariff or non-tariff barriers or by foreign exchange controls. The government assists in providing technologically superior plant and equipment and seed money for R&D and consults with industry leaders on products to target first.

Next, this consortium of government and industry stages an export push into open world markets, engaging in cut-throat below-cost pricing, generally in very narrow product lines to establish a dominant position in those product lines. Finally, with the unsubsidized competition in weakened condition, the consortium is able to expand into other product lines and the cycle is complete.

But the cycle doesn't always end there. Sometimes the sound, financial base these foreign firms achieve at cycle's end, enables them to buy up American firms or facilities at distress prices. When they re-open closed American plants, we exhibit boundless gratitude that they are putting American workers back on line. This must be considered supremely ironic. We note, for instance, that Korea's Pohang Iron and Steel Company is reportedly engaged in talks with U.S. Producers with a view to investing in U.S. steel facilities. Each targeting cycle normally lasts from ten to fifteen years. At this point, the cycle commences anew with the selection of another target industry.

TARGETING EFFECTS ON U.S. INDUSTRY

What is the impact of targeting on American industry? The first effect is the inability to match on economic bases the technological development achieved by the targeting country and its subsidized firms, because U.S. firms must finance their own initial research and development. They must do so in a regulated, antitrust environment so that a sharing of the costs and the fruits of R&D often is not possible. Finally, they generally must make this commitment of resources while facing competition from both domestic and foreign counterparts. On the other hand, to the extent any other country could be considered to have antitrust legislation comparable to that of the United States, targeted industries invariably are immune from antitrust law restrictions. Targeted industries also receive substantial government subsidies to fund R&D efforts. This funding is normally aimed at efforts to develop direct immediate commercial applications.

The U.S. industries which compete against these subsidized foreign firms face serious problems and, in many instances, a grim future. Against imports which may be priced 30 to 50 percent lower, U.S. companies are often forced to give up markets for the affected product line or meet the import price even if that means selling below cost of production. This results in rising unemployment, low factory utilization levels, and operating losses coupled with retrenchment and failure to invest in new technologies. The inability to keep up with technological advances, in both more efficient production equipment and in new product development perpetuates the vicious cycle and contributes to the loss of still more product markets to the competing foreign firms. The impact of our failure to cope with this problem is being felt now and will grow even more serious if action is not taken. It threatens to erode our industrial base and transform our economy into a service industry economy, or force the U.S. government to resort to these same tactics of state ownership and subsidization to save those industries we consider essential. We all have a stake in preventing this scenario.

ACTIONS ON TRADE POLICY

How do we design a trade policy to cope with these problems? One method of competing with subsidized export credits which disadvantage our firms in competition abroad, is to provide comparable financing at public expense. Eximbank Chairman Draper estimated recently that in 1981 industrial nations spent $10 billion on export credits alone. Attempts to curb this practice within the GATT and the OECD have failed. Two of the biggest offenders, Brazil and Korea, are not even OECD members. The Administration has announced its intention to consider an additional $2.7 billion in the Exim budget to fight subsidized credit competition, that is, to provide U.S. companies subsidized financing to enable them to compete with subsidized foreign firms to win contracts in third country markets. Perhaps such a policy is the only way to make clear to our trading partners that this form of trade distorting competition will not be tolerated. Unfortunately from a trade policy perspective, the next step will probably be to provide these kinds of subsidies to American firms competing in our own market. Had such financing been available, I doubt if the Canadians would be supplying subway cars to New York City.

For the problems existing in our own market, the first line of defense must be our unfair trade legislation. The countervailing duty law should be strengthened, and relief under Section 301 of the 1974 Trade Act expanded. Our government should not engage in a more restrictive reading of the GATT than our trading partners. There are literally dozens of technical changes in U.S. import laws which are necessary and I am confident this subcommittee will be hearing more about these in great detail. I will mention but a few.

The GATT and the Subsidies Code prohibit subsidies of all types, yet our trade laws are interpreted so as to deny a remedy in many critical cases. In particular, I note our apparent inability to face the issues of subsidies via state-owned enterprises and so-called upstream subsidies under the countervailing duty law. Indeed, by the mere insertion of a state-owned enterprise into the picture as a subsidy conduit, foreign governments have been able to subsidize whole industries without fear of reprisal. Our trade laws should demand a more rational U.S. policy.

There is also the problem of downstream dumping, where both state owned and private enterprises sell input products at marginal cost prices to downstream producers which then pass along those savings on inputs to U.S. purchasers of fabricated products. This transfers the problem to American producers of the downstream product. For example, if there is a dumping order on below-cost sales of wire rod from Country "X," the Country "X" wire rod maker can simply sell that wire rod to Country "X" wire rope producers, who in turn sell to U.S. wire rope importers. The

Commerce Department believes that it cannot deal with this problem under current law.

I would also note that there are serious problems under the countervailing duty law in obtaining timely relief:

Virtually every case is the subject of an extension.

Once petitioner fulfills his burden of producing information of unfair trade practices in violation of our laws, the burden of proof should, but does not necessarily, shift to the foreign government which possesses the information necessary to prove or disprove the allegation.

It is virtually impossible to acquire business information under administrative protective order in time to actually review the information and make reasonable arguments on the basis of the information. This denies petitioners the opportunity they were supposed to have to play an active role in these cases.

While more resources could be devoted to these problems, there may also be structural problems which should be addressed. Changes in our import laws are crucial, but they are not the total solution. Some changes in U.S. antitrust legislation may also be necessary, to allow U.S. firms to share research and development costs and benefits in the same manner as their foreign competitors.

A NEW REMEDY: CIVIL DAMAGES

Finally, a new remedy is necessary. Where an American company suffers harm as a result of unfair commercial practices, as defined in our trade law, civil damages should be provided. It is not enough to have the practice stopped under the countervailing duty statute. By the time relief is attained under that statute, the unfair practice complained of may have met its objective, obviating any need for further subsidization. This is particularly true in cases involving our high-technology industries. Even under Section 301, the wrong cannot be totally redressed. A temporary quota may be helpful in giving U.S. industry an opportunity to retain some share of the market, but it does not generally give back the crucial time lost or the funds lost which could have been used for necessary re-investment in technology. And both Section 301 and the countervailing duty remedies are designed only to give a temporary breather, not to return the victim to status quo ante. Nor have either been notoriously effective in preventing a re-introduction of subsidy practices. A private damage remedy would meet these needs. When they seek to enter the U.S. market, foreign firms should be subject to the same rules of conduct as American firms. And they should know there will be no first bite without paying the tab. I do not believe that the problems I address today can be fully resolved until such a remedy is provided. Damage awards can serve as the investment funding lost to unfair foreign competition and can help U.S. companies to make up lost ground. In addition, knowledge on the part of foreign governments and firms that such liability exists can help to prevent unfair trade practices. This creates better long-term security from such practices and a better investment climate than do import relief laws which do not swing into action until after the harm has been suffered.

Private remedy legislation can reach the past wrongs which our import relief legislation does not address. For example, by the time actual imports appear in the U.S. market, the subsidized R&D which developed those products is considered fully amortized, resulting in a "O" countervailing duty. Further, there is a significant problem in showing injury under our import relief legislation; by the time sufficient information can be developed to file a complaint, foreign competitors may have reduced their imports, sometimes as part of their predatory strategy, while increasing their share of our market. This problem is particularly acute during a recession. A civil damage remedy could overcome these technical problems. It is ironic that, if all the moneys collected under the countervailing duty law were channelled into subsidies for the injured American industry, we would be in violation of the GATT. A civil damage statute is part of our solution. We now have the 1916 Antidumping Act, relief under which is virtually impossible to achieve because specific intent must be proved. Subsidized foreign firms must be presumed to intend the foreseeable consequences of their actions. This could become the basis of a new statute, civil in nature, which would provide simple damages. A separate statutory provision, with an intent requirement and providing treble damages, could supplement the civil remedy. With these changes, American industry can function successfully in a fair-trade atmosphere.

Once that environment is created, U.S. industry will prove its mettle.

Chairman **Gibbons**. Next, Mr. Hemmendinger.

STATEMENT OF NOEL HEMMENDINGER, PARTNER, LAW FIRM OF ARTER, HADDEN & HEMMENDINGER, WASHINGTON, D.C.

Mr. HEMMENDINGER. Thank you, Mr. Chairman.

For the record, I am Noel Hemmendinger, a partner in the law firm of Arter, Hadden & Hemmendinger, testifying strictly on my own behalf.

As you well know, I have represented over many years foreign interests and import interests. I don't believe I have ever represented a domestic interest in a trade case. Nevertheless, I think you will concur when you hear me that my views are formulated independently and are not a plea for any client interest.

Now, if you ask me about Japanese steel I will have to put on another hat. If you ask me about certain Brazilian issues I will have to put on another hat, but I am not really speaking for any client interest. I think I can fairly say my views come out of a certain tendency to look at things as if the Emperor had no clothes.

I think we have a lot of fictions and it is necessary to cut through a lot of those fictions in the trade areas well as in many others.

I do appreciate the opportunity to come here as an individual and I want, Mr. Chairman, to say I particularly appreciate your role as chairman of this subcommittee and as a resister of certain trends in legislation which might have been very unfortunate.

I stress that because I am going to take issue with some points of view which you have expressed rather strongly. My first point in that connection is that the distinction between fair trade and unfair trade which is so fundamental in the structure of our trade laws is fallacious and mischievous and I regret to say that while I disagree with a great deal of what the licit group before us was saying, I think that every American must be very much concerned with how to improve American competitiveness.

I cannot agree with the tendency to put everything that we think should be discouraged in the way of import trade under the heading of unfair. I think we make a terrible mistake in doing that.

We characterize as wrong the conduct of many countries which they firmly believe is in their interest and is correct, which we ourselves admit is probably in their interest, and we are seeking on many occasions to emulate.

We have the fiction that in order to do something about it we have got to call it unfair and it is very important that we get away from that.

This goes for the concept of targeting which is the latest expression for something that is pretty old. Targeting is the name of the game today. If you take apart the licit testimony, which is extremely well done, you see a lot in it that is constructive, that is talking about what we as Americans could be doing to strengthen American industry and then you see, again, this idea that in order to impose any barrier to imports, in order to help American industry become stronger to remedy weaknesses to restructure we have to call it unfair.

They make, in my opinion, a big mistake in doing that. I have been astonished, as I think many trade attorneys of longstanding have been astonished to see how much is being made of section 301 lately. This is because we don't know how to deal with something unless we call it unfair, and yet the remarkable thing is that we have had on the books all these years a very sensible statute, Title II of the Trade Act of 1974, which provides that if an industry has a problem it goes to the ITC and the ITC investigates the nature of the problem and then it makes a report to the President and if the President agrees with the finding that an American industry is seriously injured or threatened with serious injury the President has a wide choice of remedies to choose from and this is in accordance with the GATT, it is not an insult or offense to any of the other countries concerned.

It is recognized as a right of the United States as every other country to do what it considers necessary and appropriate to defend its industries.

We have mistakenly put that statute on the back burner. That is the law that the people who are worried about foreign competition should be talking about using because we can, in that context, conduct a dialog with the other foreign countries which is not insulting to them and we can also avoid the automaticity, and I think in my brief that is called automobility, which I regret.

The spurious automaticity that we give to the trade laws by providing in dumping and countervailing no Presidential intervention. Some people are trying to provide remedies even to the extreme advocated by my good friend, Herb Harris, my former Congressman—I wish he was my Congressman still.

Anyway, we have the idea that these things should be done as a matter of right. You put your quarter in at the top and you get your result out at the bottom of the slot machine. You cannot judicialize these procedures which involve important issues with foreign countries and which involve high amounts of discretion.

There is no way to avoid the judgmental elements and the difficult choices that enter into them and the idea of turning them over more to the courts, we have made a terrible mistake to turn over as much to the courts as we have. Now people want to turn over more to the courts and that rather astonishes me.

This leads to a number of corollary propositions, one of which is that we need to have more freedom to negotiate these issues as intergovernmental matters with self-respect on both sides and without insults.

We should stop kidding ourselves, and I was glad Gary Horlick made this point, that we are making precise determinations in these cases. They are never precise determinations and we must recognize that all we can do is approximate justice.

And, therefore, negotiation is a very appropriate technique.

I want to make this point that despite the great troubles in which we find our own economy, the whole world economy is tottering with the problems of the LDC's and we have got to allow the LDC's, and I am talking now about the richer ones now as well as the poorer ones, to sell to this country if we are going to have markets there and if they are going to prevent the world financial system from coming down around our ears.

These all lead me to an idea which I first advanced before this committee at least 10 years ago. There ought to be a single form of action for trade matters in which an aggrieved industry, union or whatever, can come before an appropriate body, perhaps the ITC and state its grievance and have those issues sorted out systematically with hearings and whatever are necessary, have foreign investigations if necessary, and then all channel to one authority, which would be normally a delegate of the President but ultimately the President himself if important enough to reach a conclusion and negotiate, if that is appropriate, with the foreign suppliers.

That would be a relief to the enormous financial burden of which you have heard so much, a lot of the enormous financial burden which is now the result of the complexity of the laws that we have on the books.

This proposal which I make, by the way, does not in itself embody any changes in present standards. It could be done by simply combining the standards that exist under present laws but ultimately I would hope it would lead to a unified conception.

I advance this, Mr. Chairman, as a trade neutral proposal. It isn't that it is inherently neutral the way I put it but it can be altered in many ways so that it fits the perceived needs as the Congress and the Executive might work them out. There has to be a balance, obviously, but I don't share the fears of those who think the President is unduly insensitive to the needs of domestic industry and I don't share the fears of those who think the President is unduly subjected to political pressures.

And everytime I advance this proposal I get that in one ear and in the other ear I get the other criticism.

I have in my prepared statement some more specific proposals which are very serious ones which relate to the ways in which the present laws are operating but in the interest of time, Mr. Chairman, I thank you and leave those for the record.

Chairman GIBBONS. Thank you, Mr. Hemmendinger.

[The prepared statement follows:]

STATEMENT OF NOEL HEMMENDINGER, PARTNER, LAW FIRM OF ARTER, HADDEN & HEMMENDINGER, WASHINGTON, D.C.

SUMMARY

1. The distinction between fair trade and unfair trade does not reflect reality.
2. The primary questions should be injury and the justification for protection, if any.
3. There should be more leeway to resolve cases by intergovernmental negotiation.
4. Precise determinations are impossible and involve misdirected energies.
5. Special consideration to the problems of the LDC's is required.
6. There should be a single cause of action in trade remedy cases.
7. The U.S. should abandon the use of the Subsidies Code as a weapon to compel developing countries to give up export subsidies before being accorded the injury test.
8. Section 751 of the TAA should not be applied retroactively in Countervailing Duty cases.
9. Interlocutory appeals should be abolished.

STATEMENT

My name is Noel Hemmendinger. I am a partner of the Washington law firm of Arter Hadden & Hemmendinger with offices at 1919 Pennsylvania Avenue, N.W. This testimony is given on my own behalf and represents strictly my own opinion. It does not reflect the views of my partners or my clients. I come before you, as I have many times before, to offer my personal views based upon 26 years in the practice of trade law in Washington,[1] and 19 years of service in the Government before that.

As this Committee well knows, the severe worldwide recession is putting a great strain upon the international trading and financial systems, and is giving rise to conflicts of interest both between nations and between sectors of our own economy for which there are no simple solutions. Trade policy cannot exist independent of national economic policy, but the laws that we have come here today to examine will not supply solutions. Given the gravity of the problems, however, it becomes extremely important that they be examined within a legal and policy context.

To the extent that that context is established by our trade laws, that makes sense. In such difficult times, we cannot afford anomalies of the trade remedy laws that lead to wasted and misdirected efforts.

I believe that the goals of the trade laws need to be reexamined, bringing into the picture the latest buzzword "targeting" and an older expression that has fallen into disfavor without much exploration of its content, namely, industrial policy.

I urge that this Committee associate itself with the Executive in a searching reexamination of trade policy, not simply as to details that can be improved, but as to the fundamental structure.

My preoccupation in this paper, however, is not the ultimate shape of trade policy. That will inevitably be a compromise as the conflicting pressures within the U.S. economy work their way out. My preoccupation is with the process, the way in which trade decisions are made. I wish to contribute the following ideas:

1. The distinction between fair trade and unfair trade, which is fundamental in the structute of our laws dealing with import restrictions, simply does not reflect reality. It has been a useful conception, central to the idea of the rule of law in trade matters. But it is an inadequate guide to the resolution of major trade disputes. All trade has been conditioned over time by governmental interventions. Most important, a critical element of both countervailing duty and antidumping investigations is the exchange rate. The exchange rates are notoriously capricious. They reflect capital transfers as well as trade; they reflect political trends. They simply do not fairly reflect comparative advantage in trade. Nevertheless, in dumping cases, the calculation whether or not there are sales below home market price depends strictly upon the exchange rate used, and in countervailing duty cases many developing countries employ export subsidies as alternative strategies to currency devaluation. The exchange rate is thus still the key.

2. A rational trade policy would put primacy not upon the conduct of the foreign government, a challenge to which is an invidious matter at best, but upon the effects of the product concerned within the United States. Injury and need for protection, if that can be justified, should be the paramount questions. Policy over many years has reversed this logical approach. We have on the books a truly rational statute which examines the problem of import restrictions from the standpoint of injury, namely title II of the Trade Act of 1974. It provides for an impartial examination by the International Trade Commission and a determination by the President, who may negotiate with foreign countries in the process, based upon all elements of the national interest. Nevertheless, the conventional wisdom is that title II should be avoided and the laws against unfair competition enforced to the hilt.

3. It is necessary, particularly in these most troubled days and particularly where large issues are involved, that the issues be negotiated between governments without arbitrary statutory restrictions. In the end the issues do get negotiated; the big cases have escaped the confines of the laws. Consider steel, textiles, and automobiles for instance. We would be well advised to be more honest with ourselves and to give the Executive the authority to deal with trade cases in general with a much wider degree of discretion. I know that the present laws have arisen precisely out of displeasure here in Congress with Executive discretion which was considered to be illused. I submit that the Congress has reacted excessively to partisan interests and that the remedy is worse than the disease.

4. We should stop deceiving ourselves that in the execution of the laws we are making precise determinations. It is laughable for the Commerce Department to engage in weeks and months of analysis and come up with a finding that foreign subsidies are 3.624 percent. (I am glad to note that Mr. Horlick made this same point when he testified on March 16.) No one with the slightest grasp of the facts believes that the inputs lend themselves to such precision. Time and energies are misdirected. This is allied to the misconception that trade proceedings can proceed with automobility, with no need for discretion. To be sure, remarkable things can be

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[1] The law firm is registered under the Foreign Agents Registration Act on behalf of a number of foreign interests.

done with computers and manpower, but the results can be no more accurate than the inputs. The inputs inevitiably include restrictions and judgmental factors.

5. Special consideration is necessary to the problems of the LDCs. This is now obvious as we face not merely the familiar problems of the poorer developing countries but near bankruptcy of the richer. If they are to repay loans, they must be able to trade with the United States. Our exports, and our economic recovery, also depend to a significant degree on the ability of LDC's to raise foreign exchange through trade. The countries that are the largest debtors and to which we sell a large percentage of our exports are the countries that are in the deepest trouble in coping with the rigors of our Countervailing Duty Laws.

6. These considerations all lead to a proposal which I first advanced before the Congress ten years or more ago. In reconsidering the trade laws there should be a conception of a single cause of action in which an aggrieved industry, company, or union can go before a body of the government, perhaps the ITC, and state its grievance—not its legal theory, but the reasons why imports are causing it trouble. Then there should be an impartial investigation in which the various conceptions that have been developed in the GATT and in our present laws can be utilized, not so much in terms of grounds for relief but in terms of the remedy. If relief is called for, the matter should go to the President in all cases to negotiate with the foreign suppliers and if necessary take unilateral U.S. measures. Such measures would include prescriptions for the U.S. industry to accept if it wants relief. Foreign investigations could be conducted, as now, by the appropriate agencies.

This is intended as a trade-neutral proposal. It can obviously be framed in many different ways, but the decisions in the end will reflect the judgment of the Government of the United States at the time as to what is in the interest of the country.

I do not share the fears of those who believe that such a procedure exposes the President to intolerable political pressures. That is the genius of the institution of the Presidency, that it is only there that all of the various forces can come to bear. The Congress has wisely abdicated tariff-making authority because it has found that it cannot avoid log-rolling. Mistakes will be made but there will be fewer mistakes if the process is rational.

Nor do I share the fears of those who believe that the interests of American producers will get short shrift. They elect the President. But if such fears are real, the mechanism can be fine-tuned, as by tinkering, within the Congressional override provision that now exists in Title II.

If this committee should decide to consider more specific ideas that could be implemented in a shorter time, I present the following for consideration.

7. The U.S. should genuinely accept the provisions of the Subsidies Code that recognize that export subsidies may be legitimate economic measures on the part of developing countries, and give up the use of Article 14.5 of the Subsidies Code as a device to compel developing countries to abandon export subsidies as the price for receiving the injury test. The injury test should be made a standard part of the Countervailing Duty Law, as it has long been of the Antidumping Act. It makes no sense for the U.S. to restrict imports if they do not cause material injury to a domestic industry. The present practice of bilateral arrangements before countries are accepted as co-signatories of the Subsidies Code is contrary to the longstanding U.S. practice of non-discrimination and mischievous in its consequences.

8. In countervailing duty cases, Commerce should return to the pre-1980 practice of normally fixing duties, based on historical experience, that are promptly liquidated. The practice under Section 751 of the Act (which I think is not required by the statute) keeps the amount of duty uncertain for one to two years after entry, and is an unreasonable burden on commerce.

9. Interlocutory appeals to the Court of International Trade should be abolished. Lawyers perceive it to be their duty to pursue all possible legal avenues in support of their client's interests. The cost is highly excessive for any incremental justice achieved. I am glad to note from previous testimony that there seems to be a consensus on this point.

Chairman GIBBONS. Our next witness is Mr. McCauley.

STATEMENT OF ALFRED R. McCAULEY, LAW FIRM OF GRAUBARD, MOSKOVITZ & McCAULEY, WASHINGTON, D.C.

Mr. McCAULEY. Mr. Chairman, I am Alfred McCauley of the Washington law firm of Graubard, Moskovitz & McCauley.

I also appear in my individual capacity and not with respect to any client and I want to thank you and the members of this committee for offering me this opportunity to be here.

These proceedings are taking place in the context of a debate whose underlying rationale seems increasingly to be that international trade is a detriment and a negative. One wonders how this could be when we view the significant percentage of our gross national product that is attributable to international trade and the millions of jobs and the thousands of businesses who are dependent upon continued and viable trade.

I submit that the critical importance of trade to our country is indeed the backdrop for assessing what the objectives of our trade remedy laws should be and whether such objectives are being followed.

It seems obvious to me that our trade laws should nurture and encourage trade expansion so that even more jobs and more businesses will share in the rewards of trade.

I don't believe that the present laws serve that end and I don't believe that proposals I have heard for amending these laws would serve that end either.

If we continue on a course of adopting increasingly restrictive trade laws our trading partners will do the same.

As the President's Council of Economic Advisers said and I quote, "If the system comes apart, if the world's nations allow themselves to be caught up in a spiral of retaliatory trade restrictions, a long time may pass before the pieces are put back together again."

As it has over time, the United States should be leading the way to eliminating, not encouraging trade restrictions, simply because it is in our self-interest to do that.

Now, members of the subcommittee and others have expressed concern about the time and expense involved in processing cases under the trade laws. The concern has been expressed mainly from the vantage point of domestic producers and workers who are interested in obtaining relief under those laws. I think it is important for this committee to understand that the so-called respondents in these proceedings also incur significant expenses.

The importers, the exporters, the distributors and the consumers and users of foreign products involved in these proceedings have not only the high expenses of defending their cases but they have an additional expense which is extremely important to focus on. When a person or a firm is involved in one of these proceedings on the respondent's side of the fence, their business activities at best are disrupted and often are severely curtailed, very shortly after these proceedings begin.

It is not unusual for some respondents in a proceeding to suspend doing business in light of potential sanctions of the trade laws.

I submit, therefore, that the subcommittee's concern must be with the equity for all parties to the proceedings, not only just a few.

The antidumping and countervailing statutes, in my oinion, should be amended to require that petitions be directed to specific products. The tendency has been for petitioners to file and for Commerce to accept a single petition involving hundreds of articles of commerce. Allegations of unfair trade related to a few products are presumed applicable to all. These "shotgun" approaches are perceived in some quarters as a harassment technique which, of course, has no place in our laws. Of equal relevance, these petitions overload staff resources of the administering agencies, give rise to pressures which prolong the time that it takes to process the cases and often can and do affect the accuracy of the results.

The countervailing duty statute has a broad thrust at subsidies which, in my opinion, also contributes to the problems of excessive time and expense, as well as to other problems.

The statute sets in motion a review and analysis of any and all foreign government programs. Thus, the administrators are not directed, as they should be, to restrict their inquiry to those subsidies which distort trade and to discerning the effects of such distortion on U.S. industry and workers. Rather, the agency engages in extensive investigation and analysis of Government programs of all kinds and descriptions, including laws and regulations dealing with taxes, unemployment, housing, worker relocation, the environment, education and similar programs whose purposes are manifestly not trade oriented and whose operations do not distort trade.

Now, of course, most of these programs do, in some way affect commercial activities in the countries which adopt them. But what government program in what country, including ours, does not do the same? Simply because a program affects commerce is no reason for applying countervailing sanctions.

One important consequence of the present thrust of our countervailing duty laws is to undermine, in my opinion, a basic tenet of U.S. trade policy: most-favored-nation treatment for the products of all our trading partners.

Countervailing against products on the basis of tax, housing, unemployment, and similar nontrade distorting programs of a given country results in discriminatory treatment of the products of that country, vis-a-vis the products of countries whose policies in these areas differ.

Turning to the antidumping statute, that law has become, in my opinion, a major obstacle to legitimate trade and competition. The law has long since lost its initial proper concern with predatory, anticompetitive conduct and is now an almost impossible hurdle in the path of trade in products which gain any degree of acceptance in the U.S. market.

One final comment. As I said, the United States should be leading the way in eliminating, not encouraging trade restrictions because it is in our self-interest to do so.

I share the chairman's concern and other subcommittee members' concerns about the ever-incresing enactments by Congress of Buy American requirements on Federal purchases and federally financed purchases.

Recent enactments have increased domestic preferences to the point where the purchase of foreign goods is prohibited in some areas. Moreover, some of these laws encourage the States to enact even more stringent restrictions, if that is possible.

Buy American provisions at the State and local levels are multiplying.

Now, at a time when government policy at the Federal, State, and local level is to curtail expenditures and minimize tax increases, it is folly to require that Government purchases be made under conditions which practically guarantee that the price that is paid will be higher than otherwise would be the case.

It is equally wrong, in my opinion, to maintain that such a policy helps the overall economic condition of U.S. companies and their workers. Other countries can adopt similar purchasing policies and to the extent that they do, losses on the export side will more than offset any gains from the Buy American side.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF ALFRED R. McCAULEY, GRAUBARD, MOSKOVITZ & McCAULEY

Mr. Chairman, members of the committee, I am Alfred R. McCauley of the Washington law firm of Graubard, Moskovitz & McCauley. I welcome the opportunity to participate in this oversight of the operation of the U.S. trade remedy laws.

These proceedings are taking place in the context of a debate whose underlying rationale seems increasingly to be that international trade is a detriment to the U.S. economy. One wonders how this could be when international trade accounts for over 20 percent of our GNP and when millions of American jobs and thousands of American businesses depend upon the continued exchange of goods and services between us and our trading partners. I submit that the critical importance of trade to our country is the only proper back-drop for assessing what the objectives of our trade remedy laws should be and whether such objectives are being served by these laws. It seems obvious to me that our trade laws should nurture and encourage trade expansion so that even more jobs and businesses will share in the rewards of trade. I do not believe the present laws serve that end and proposals for amending these laws seem to have entirely lost sight of where we should be heading.

If we continue on a course of adopting increasingly restrictive trade laws, our trading partners will do the same. As the President's Council of Economic Advisers said:

"If the system comes apart—if the world's nations allow themselves to be caught up in a spiral of retaliatory trade restrictions—a long time may pass before the pieces are put back together again." [1]

As it has over time, the United States should be leading the way to eliminating trade restrictions because it is in our self interest to do so.

Members of the subcommittee and others have expressed particular concern about the expense and time involved in processing cases under the trade laws. These concerns are legitimate in that they reflect the broader imperative that procedures under these laws be open, provide for certainty and uniformity, and produce results which are equitable and timely.

While the tendency is to address the time, expense and other aspects of trade remedy proceedings from the standpoint of domestic firms and workers seeking relief from import competition under these laws, it must not be overlooked that these are also important considerations to exporters, importers, distributors, and consumers and users of foreign products involved in these proceedings. These parties—known as respondents—incur significant expenses in responding to allegations of petitions filed under these laws and in answering complicated and voluminous questionnaires and interrogatories addressed to them by the administering agencies. I suspect that in many cases the respondents' expenses exceed those of the petitioning interests.

In addition, respondents incur other costs which can be greatly in excess of these direct expenses. A respondent's business activities are at best disrupted, but often are severely curtailed, very shortly after one of these proceedings is commenced. It is not unusual for some respondents in a proceeding to suspend doing business in light of the potential sanctions of the trade laws.

Thus, the subcommittee's concern must be with equity for all parties to proceedings under these laws.

The antidumping and countervailing duty statutes should be amended to require that petitions be directed against a specific product or products. In several cases the pattern has been for petitioners to file, and for Commerce to accept, a single petition involving hundreds of articles of commerce. Allegations of unfair trade related to a few products are presumed applicable to all products. These "shot-gun" approaches are perceived in some quarters as a harassment technique, which, of course has no place in any system of law. Of equal relevance these petitions overload staff resources of the administering agencies, give rise to pressures which prolong the time it takes to process cases, and can affect the accuracy of the results.

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[1] *Economic Report of the President to Congress*, February, 1983, p. 51.

The countervailing duty statute's thrust at "subsidies" also contributes to the problem of excessive time and expenses, as well as to other problems. The statute sets in motion a process of review and analysis of any and all foreign government programs. Thus, the administrators are not directed, as they should be, to restrict their inquiry to those subsidies which distort trade and to discerning the effects of such distortions on U.S. industry and workers. Rather the administering agency engages in extensive investigation and analysis of government programs of all kinds and descriptions, including laws and regulations dealing with taxes, unemployment, housing, worker relocation, the environment, education, and similar programs whose purposes are manifestly not trade oriented and whose operations do not distort trade. Of course, most of these programs do, in some way, affect commercial activities in the countries which adopt them. But what government program in any country, including ours, does not do the same? Simply because a program affects commerce is no reason for applying countervailing sanctions.

One important consequence of the present thrust of our countervailing duty laws is to undermine a basic tenet of U.S. trade policy—most favored nation treatment for the products of our trading partners. Countervailing against products on the basis of tax, housing, unemployment, and similar non-trade distorting programs of a given country results in discriminatory treatment of such products vis-a-vis the products of countries whose policies in these areas of governmental concern differ.

The antidumping statute has become a major obstacle to legitimate trade and competition. The law has long since lost its initial proper concern with predatory, anti-competitive conduct and is now an almost impossible hurdle in the path of trade in products which gain any degree of success in the market place.

One final comment. As I said, the United States should be leading the way in eliminating, not encouraging, trade restrictions because it is in our self interest to do so. I share the Chairman's and other subcommittee members' concerns about the ever-increasing enactments by Congress of Buy-American requirements on Federal purchases and Federally-financed purchases. Recent enactments have increased the domestic preference to the point where purchases of foreign goods are prohibited in some areas. Moreover, some of these laws encourage the States to enact even more stringent restrictions, if that is possible. Buy-American provisions at the State and local levels are multiplying.

At a time when government policy—at the Federal, State and local level—is to curtail expenditures and minimize tax increases, it is folly to require that government purchases be made under conditions which practically guarantee that the price paid will be higher than would otherwise be the case. It is equally wrong to maintain that such a policy helps the overall economic condition of U.S. companies and their workers. Other countries can adopt similar purchasing policies. To the extent they do, losses on the export side will more than offset any gains from a Buy-national program.

Chairman GIBBONS. Thank you to all three of you for your very stimulating and thought provoking suggestions.

Let me make clear what my personal objective is. I want to create a trading system that is fair to the large countries, the small countries, the rich countries, the poor countries, the developed countries and the underdeveloped countries. And I want to do it as a matter of law, a law that all of us can repair to to settle our differences.

As I understand the existing system under the General Agreement on Tariffs and Trade, we do agree under that set of agreements that certain practices are not looked upon favorably.

The two practices that I am focusing my attention on are the unfair subsidy practices and the unfair dumping practices.

I am not interested in trying to solve everybody's problems, real or imagined, in all the other trade functions that we look at.

I have sat through these hearings now for almost 13 years and I realize if we start off trying to solve all the world's problems at one time we are not going to end up solving any of them intelligently.

When I say all the world's problems I am talking about our problems because we are the bigget trading operation in the world and we have more to lose than anyone else if we tinker with this system in an unwise fashion.

I appreciate your criticisms of our dumping laws and our countervailing duty laws as perhaps being a shotgun approach or being used as harassment and I would try to eliminate that abuse as well as the abuses I see in other people's practices.

But having expounded myself on that, Mr. McCauley and Mr. Hemmendinger, where do we disagree?

Mr. **Hemmendinger**. I am glad of the opportunity to comment on that, Mr. Gibbons, because I think that we are overlooking the fact that in dumping cases, for instance, we are no longer in a regime of fixed exchange rates. Exchange rates have become extremely capricious. They respond to forces which are quite different from those that are involved in any real sense of comparative advantage in trade. And yet you cannot have a dumping case without the very nexus between the foreign prices and the price complained of in the United States being the exchange rate.

As for subsidization, we have to discriminate but the reasons that major Latin American suppliers to the United States have engaged in export subsidies is largely because of exchange rate imbalances disequilibria.

Development economists have recognized the legitimacy of such steps but the U.S. law does not. Then when you come to heavily subsidized industries like European steel they are not efficient industries. They are not selling in the United States because they are subsidized. They are subsidized because they are in bad trouble.

We wouldn't have considered the Chrysler bailout even if we poured in free equity and were put in a position to sell vehicles abroad at an unfair price. There is no necessary relationship between that type of government intervention.

The fact is government intervention that is determined trade from the beginning of time and we are simply living in an illusory world. We have directed a theory which doesn't sustain when we say that government intervention is something to be dealt with and without government intervention it is fair trade.

Chairman **Gibbons**. I realize there are degrees of government intervention and one of the problems that I see is drawing an intelligent line as to what is appropriate and what is inappropriate as far as our own domestic market is concerned.

Go ahead.

Mr. **McCauley**. Mr. Chairman, I don't think there is any disagreement between you and me in objectives. We are dealing here with situations which are not unusual. Two equals, two autonomous units, the United States and one of its trading partners have a dispute. From time immemorial, disputes between two equals are settled, in one of three ways: Either the two parties concede power to a higher law which will govern the resolution of the dispute. Failing that, they negotiate their differences and come to an understanding and a settlement. Failing that they go to war, in the figurative sense of that word where the dispute involves a matter of trade.

I think I heard you say that you would opt, and I am sure everyone would agree with you, I certainly do, for a try at the first method of dealing with trade problems. That is, let us see whether there is not the possibility of the negotiation of a legally binding framework, in an international sense, such as the GATT, to give rise to a body of law that will guide and bind parties, dictate their conduct and prescribe for dispute settlements.

Mr. **Harris**. Mr. Chairman, could I say one word to defend the furrows in the chairman's brow here.

Chairman **Gibbons**. Don't worry about me.

Mr. **Harris**. I think we all should, along with you and other great leaders, Mr. Chairman.

If you look at papers from Japan and see an 88 percent margin, you are pretty sure of what is happening. If you look at, for example, a fabricated product from Korea where they use basically the same machinery as they use in the United States; where, while it is a capital intensive industry they may have a substantial labor advantage; and where they have a disadvantage with regard to raw product and to energy. Sales of those products in the United States result in not a 10-percent margin, not at a 20-percent margin, but at a 50- and 60-percent margin. At that point, people have got to start worrying and saying, why is an industry leaving consistently over 2 to 3 years 40 to 50 percent on the table when they know that they don't have to? And you have got to suspect an objective that is fairly predatory as far as trying to do away with the domestic industry that they are competing with.

May I add to that, Mr. Chairman. It is an important point that when, that happens, and I am not saying how extensive or nonextensive it is, but when it happens it not only damages domestic industry, but the legitimate third country exporter is driven right out as well. Sometimes, the third country exporter that has to leave this market because that type of targeting operation is going on by another country is even recognized as being the most efficient industry in the world compared to the United States.

There are specific examples of that that each of us have to be concerned with if we want truly a free trading system. We don't have it when that efficient operator is driven out of our market because there is a targeted, highly subsidized operator that comes in.

Mr. **McCauley**. If Mr. Harris is talking about a highly subsidized, targeted product that is coming in here underwritten by government funds which allow the sale at a low price, he is talking about an unfair trade practice and I agree that it should be neutralized.

The magnitude of the price differences he gives amazes me. I don't understand why anybody would leave 50 percent on the table.

But in any event, the problem is of course that if we go after all cases where there are differences in prices, we end up making our countervailing duty and dumping laws what they probably are already, that is, price maintenance laws. They become fair trade laws in the sense of establishing prices at which merchandise must be sold.

Chairman **Gibbons**. I don't want to do that.

Mr. McCAULEY. I don't either, sir.

Chairman GIBBONS. I lived through an era of fair trade laws in my own State and recognize that those are just price fixing arrangements, and gauge the consumer. That is ancient history with me but one I remember well. I remember how popular they became in the 1920's and 1930's. I don't intend to create any monster like that.

Let me put myself on trial here for a minute, not in a personal sense, but my ideas.

Is it impractical that we can develop a set of laws that in effect lay the groundwork for what is free trade, what is equitable trade, what is not an unfair practice, predatory practice? Maybe that is a better word than unfair. I realize "unfair" is a difficult word.

Or should we just allow countries to go ahead and subsidize their way into our market or their way into world markets and ignore its implication for everyone?

Mr. HEMMENDINGER. If I may respond first to that, Mr. Chairman, I don't think anyone is suggesting that those practices should be ignored or that countermeasures should not be taken. The burden of my argument, Mr. Chairman, is that we waste too many energies on trying to decide what is fair and unfair and we make too many enemies in doing it and erect barriers to constructive dialogs.

I believe that we should have a system in which prices which are perceived as some by predatory are—that we receive government attention on those and at an early stage they would be discussed between the U.S. Government and the government concerned.

I do not believe you can have a system which lays down every single standard, every single situation and I don't think it can be self-administering as we tried under our present situation.

I do not think they are anything like traffic laws in the city of Alexandria. They are a very different kind of thing. They do involve the necessity for a great deal of discretion and adjustment because of the variety of considerations we have been talking about.

Mr. HARRIS. Mr. Chairman, if I may, I would comment this much. Obviously the discretion found in the laws as they currently exist need adjustments if 60 percent of the countervailing duty cases and dumping cases are being taken to court, by my count anyway.

While this may be attractive to the legal profession, I don't think it is attractive from the pursuit of trade policy considerations.

I think, to the extent that we can eliminate those obvious areas where we are requiring the court to instruct the government as to how to operate the laws, that such changes ought to be made in a way that removes discretion to the point of at least satisfying our legal requirements.

Mr. McCAULEY. If I might, Mr. Chairman, I would say that I would come down harder on Mr. Hemmendinger's side than on my friend, Mr. Harris' side. The cases he refers to that are in court are there because the plaintiffs, the moving parties in those cases, feel that this Congress has dotted every "i" and crossed every "t" as to what the elements of a countervailing duty or dumping or escape clause case are, and so far they have received encouragement from the court that indeed that is the case.

I find in my own experience that in this area of unfair competition—this area we are talking about—that it is not possible for a committee of Congress or the Congress itself, to set out in the law all the circumstances and all the elements that constitute an unfair case versus a case that is not unfair.

It is a situation that so often is confronted by the Congress where what you need to do, in my opinion, is to legislate a charter and depend upon the administrators to carry out the policy and fill in the blanks.

In the area of "unfair competition," that phrase itself was wrestled with by other committees of Congress which tried to come up with precise jurisdictional mandates for the Federal Trade Commission and did not succeed. So it is not too different here.

I think the frustration that has been experienced by legislators will probably continue as long as words such as "unfair" are continued to be used in statutes. Basically, discretion vested in competent administrators is what is needed.

Chairman GIBBONS. Mr. Hemmendinger and Mr. McCauley, you both brought out an important point that to the respondent as well as to the petitioner in these cases, there is a heavy cost. What suggestions would you make as to how these laws can be improved and yet reduce some of the costs involved?

Mr. MCCAULEY. I suggested in my statements, Mr. Chairman, that as a preliminary matter the petitioning interests should be required to cast their petitions much more specifically than they do. I suggest, also, that there should be more thought given to a preinvestigatory review.

Chairman GIBBONS. Before you go too far, let's go back to specifics. What do you mean by specifics?

Let's assume I have never seen a petition and I don't know what is in it. Tell me what you think ought to be in that petition by a petitioner?

Mr. MCCAULEY. For example, I think if a petitioner is coming in complaining about imported automobiles, if he is allowed to cast his petition in broad terms he places in jeopardy the whole gamut of importers, distributors, and others of cars running from the Bentleys, and the Rolls-Royces, down to the Hondas.

Now, I refuse to believe that domestic interests are bothered by imports of Bentleys and Rolls-Royces and they should be made to excise those out of their complaint. The fact of the matter is that they don't.

Now, I have not come prepared, Mr. Chairman, with anecdotal evidence, but I can assure you that my pracice has been replete with instances of the businesses of individuals disrupted and torn asunder, as it were, by broad-brush petitions and at the end of the day it was found they didn't belong in the case in the first place.

Chairman GIBBONS. As a lawyer I am familiar with the problem of drawing a complaint that is so vague and indefinite and broad that you feel you have sued everybody under the sun.

Mr. MCCAULEY. That is right.

Chairman GIBBONS. Then you get a motion to dismiss and you find you are then dismissed because of lack of specificity.

What in the trade area should we do to require greater specificity?

Mr. **McCauley**. The petitioning interest—who by the way has a lot of time to draft their petitions—must be made to exercise care in framing their complaint. The time doesn't start to run in these cases until they throw their petition into the hopper. I suspect—I am sure there are others who could confirm my suspicions—that few petitions are drawn without consultation beforehand with the agencies to whom they are going to be presented.

These procedures should be formalized so that the product area and specific concern involved will be identified before the time starts to run against those whose businesses are being interrupted by these proceedings and who in some cases should not suffer such consequences.

Again, I think that what is needed is care in the beginning in identifying the product involved and the precise problem that the petitioner perceives he is experiencing with respect to marketing of that product.

Chairman **Gibbons**. Mr. Frenzel?

Mr. **Frenzel**. Mr. Chairman, I appreciate the opportunity to receive all this information. I understand the representational situation here, I appreciate all this free legal counsel. I am sure it will be of great help to the subcommittee as we go forward here.

I particularly am interested in Mr. McCauley's testimony. I think that while the current economic situation leads us to look for areas in which we can tighten up all these laws I think your advice is well taken. The way I look at these laws from all aspects, there are certain parts of them that not only do not need to be tightened up but don't need to be there at all.

I just want to thank the panel. I appreciate their willingness to come in.

Chairman **Gibbons**. Let me say to you and to our staff, I want to offer you the opportunity and ask them to work with you so that your concerns are accurately reflected in our deliberations here.

I mean what I say when I say we are going to reach an open decision about what needs to be done, what course of action we take. I want to assure, again for the unpteenth time that I don't intend to stray from the GATT. I don't intend to stray outside of those practices that I have perhaps in a search for simple explanations defined as being "unfair."

I am talking about dumping and countervailing. I am not talking about staggering all over the landscape of trade at this time. We want and need your expert advice as to how to best help us.

Thank you very much.

Mr. **Harris**. May I make one comment, Mr. Chairman, with respect to that.

You allude to the GATT and the codes we have gone through the negotiating process on such as the Subsidy Code which I believe represents real progress in trying to reach toward the legitimate undertakings as far as fair trade is concerned. I would say the Subsidy Code recognizes and prohibits the type of upstream subsidies I have referred to in my testimony and that if neither the Commerce Department nor section 301 is the correct mode to reach this practice, we have basically a right under the Subsidy Code which is not reachable under U.S. law.

I think that that aspect has to be corrected and I think this is the real challenge before this subcommittee. Thank you, sir.

Chairman GIBBONS. Thank you for your observation.

Let me assure you three, the rest of the bar, and the practitioners in the trade area, we would like to hear from all of them, specifically we invite them to come before us and express their views. We seek to learn.

I realize that we are off in a very complicated area. Thank you very much.

Our next witness represents the National Retail Merchants Association and the American Retail Federation, Mr. Stevenson, please. We are glad to have you here, Mr. Stevenson. We apologize for the long hours you have had to wait.

STATEMENT OF A. ROBERT STEVENSON, VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, K MART CORP., ACCOMPANIED BY BRUCE TURNBULL, COUNSEL, ON BEHALF OF THE AMERICAN RETAIL FEDERATION AND THE NATIONAL RETAIL MERCHANTS ASSOCIATION

Mr. STEVENSON. Thank you very much.

Mr. Chairman, it is a pleasure to be here. As you mentioned, I am with the K mart Corp. and I am here today representing the American Retail Federation and the National Retail Merchants Association. Also with me is Bruce Turnbull, counsel to the National Retail Merchants.

Chairman GIBBONS. Fine, we are glad to have you with us, also.

Mr. STEVENSON. I certainly want to compliment the committee on taking up this issue of trade remedies and ascertain why there is a lot of confusion in this area. We appreciate the committee trying to chart the proper trade policy course for us.

As retailers we are alarmed at the increasing demand for protection in the country and we are hopeful that these remedies laws do not become a rallying point for protectionist interests and that they are not changed to prevent adjustment of uncompetitive industries.

I think a lot has been gained by our open international trading system and there has been a great deal of progress since World War II. There has been some setbacks from time to time and there also have been gains.

One quotation I thought I would like to bring before the committee involves Professor Hartman of Harvard University, who said, "Whatever form protectionism takes, it ultimately is paid for in higher prices by the consumer."

There are 200 million-plus consumers out there every day and any additional trade barriers presented to them will just add to their costs.

Not only will it add to the consumer costs but protectionism leads to inefficient industry, loss of jobs, and a general competitive decline.

In general merchandise retailing imports are not a substantial part of our overall total sales but represents an important part in terms of consumer choice. This is especially true to low-income consumers. Also, in the import area there are a lot of products that are not represented in the domestic side of the field. If protectionism is imposed this leads to our trading partners adding restrictions and it has a boomerang effect on trade.

As an industry, we have put together studies showing that the consumer does in fact benefit from import merchandise and open and freer trade. When you shut off a commodity in this country we also noticed that the prices of comparable products in the United States do go up.

In all this discussion it seems that the consumer is the forgotten person in the discussions. A proper goal is the multilateral approach that certainly is exemplified by the GATT. It does not include the unilateral or bilateral approach sometimes taken.

As an industry we support enforcement against unfair competition in international agreements. We also support relief for U.S. industry where there has been unfair competition or where there is temporary adjustment measures needed.

Multilateral approaches to negotiations and trade should be undertaken in areas that are not currently covered by the GATT, including new areas in service and high technology. One area where we have had considerable experience is in the textile and apparel area which is embodied in the multifiber arrangement. This is a direct departure from GATT and in our view has been a mistake.

There has been 25 years of substantial relief to the textile and apparel industry and we have in our written comments detailed that 25 year history.

In 1982 the University of South Carolina made a study of the industry and determined that the industry is not preparing for the time when there would be freer trade and when they would have to be more competitive.

Another study I would like to cite to the committee is the 1978 study by the Council on Wage and Price Stability where they quantified the consumer costs of subsidy in the apparel and textile area. At that time they said there were $2.7 billion in costs each year for tariffs on apparel and textile items; and the cost of quotas was something like $369 million.

This can be equated to the fact that the consumers, therefore, pay about $81,000 for every protected job in this category.

Since 1978 there have been more restrictions placed on trade and we would assume that the cost of protection of each job has been going up since then.

Another area we would like to address is the unilateral actions on the part of the U.S. Government. Since 1980 there have been 73 actions against various countries. The Peoples' Republic of China is the latest where they closed down I think four categories. The method in which this is done was quite disruptive in the fact that you are given 2 weeks notice that there is—in this case there was no showing of industry harm, and that embargo losses flowed.

In 1980 where there was an embargo of wool sweaters in this country. This was at a time when the domestic industry was operating at full capacity and retailers could not satisfy the demand from domestic sources.

The side effect of embargo is retaliation. In the China case, our American farmers were affected by the closing down of certain textile categories. In summary what has happened in textiles should not spread to other portions of the economy.

It is our belief we should honor international obligations and solve the problem that way. In the case of textiles we have not done that.

As to specific remedies under review, it is our experience that antidumping, countervailing and escape clause provisions have worked pretty well. However, we do feel there can be some improvements.

In the antidumping area, there are problems especially with nonmarket economy countries. Certainly we are not in favor of dumping but the law seems to be fairly unworkable at this time. In determining dumping, the nonmarket economy countries cannot use their own cost of production, also when petitions are filed the law is so uncertain that just the mere rumor of a petition filing discourages trade activities.

The results are bad from the point of view that the consumer loses. They do not get low cost, and high quality items. The market is disrupted, also it opens the door for domestic industry misuse in bringing petitions. Finally, there is certainly the possibility of retaliation.

In antidumping we suggest the subcommittee review this area of the law and see what improvement possibilities are available for its operation.

In the escape clause provisions, the law is currently in violation of section 19 of the GATT. The GATT requires there be an injurious increase in imports related to prior restrictions. In 1974 we changed the law in contemplation that there would be a subsequent change in international agreements. This, however, did not come to fruition. I guess what we are saying is that retailing doesn't want to drift any further away from our international GATT obligations.

In this regard there have been several proposals floated on which I would like to comment. One involves limiting Presidential discretion. We think as it currently operates, Presidential discretion is useful and a strong help in the international area because it allows us to look at the full ranges of considerations in addressing a trade problem.

Another area that has been proposed is the weakening of the standard on "substantial cause" of injury. The comment we have is that if the alleged injury is not a substantial cause the granting of relief will not effectively help the domestic industry affected.

In the area of countervailing duties we think that the Commerce Department is currently misinterpreting the law. They are applying it retroactively when retroactivity should only apply to antidumping.

There is currently litigation we would hope the committee will follow to make sure the intent of the 1970 act is carried out.

In our written testimony we have also made some comment concerning the redundancy of section 337, and I will not go into any detail at this time. We have made one suggestion concerning bonding in that if a petition is dismissed the complaining party should be obligated to pay the cost of the bonds. This was a suggestion made because certain retailers find this a high cost item to carry.

If in fact there is no merit to the petition, costs should be recovered.

I want to thank you for the opportunity of appearing today. I would be happy to try to answer your questions.

[The prepared statement follows:]

STATEMENT OF A. ROBERT STEVENSON, VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, K MART CORP., ON BEHALF OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION AND THE AMERICAN RETAIL FEDERATION

SUMMARY

Statement outline

I. Support for open trading system

A. Overall, the GATT-based, multilateral system has worked well. The U.S. should adhere to it.

B. Protectionist demands threaten to transform trade remedy laws into means for preventing readjustment of U.S. industries.

C. Consumers benefit from freer trade and pay for protectionism.

II. Textile and apparel trade

A. Twenty-five years ago increasing protection has brought only greater dependence on the protections.

B. Consumers pay substantial sums for this system of protection—at least $81,000 per job protected.

C. U.S. actions have violated U.S. law and international agreements.

III. Other trade remedy laws

A. The antidumping law is unfair and unworkable in its application to nonmarket economy countries and should be amended.

B. The U.S. "escape clause":

1. Should be amended to conform to GATT by requiring that no relief be provided unless the increased imports are due to a trade concession.

2. Should not be amended to limit Presidential discretion or to weaken the linkage between imports and injury.

C. Countervailing duties should not be adjusted retroactively, as the Commerce Department is now attempting to do.

D. Section 337 should be amended to require the complaining party to pay for bonds posted during the pendency of the case where the case is ultimately dismissed.

STATEMENT

Thank you for this opportunity to make a statement before the Subcommittee on Trade of the Committee on Ways & Means of the House of Representatives on the subject of Trade Remedy Laws and the American Consumer. I am A. Robert Stevenson, Vice President, Government & Public Relation, K mart Corporation. Today I am representing the American Retail Federation and the National Retail Merchants Association. NRMA and ARF are also submitting a written statement for the record of these hearings.

In light of the confusion which exists with respect to the proper trade policy for the United States, this Subcommittee is to be commended for undertaking a careful analysis of the existing remedies available to combat unfair trade practices and to alleviate any "escape clause" injury.

Retailers and others who support freer trading systems have become increasingly alarmed by the growing demands for protection. We are concerned that the remedy laws under review by the Subcommittee may become the rallying point for protectionist interests in this country, making these laws into one of the principal means for preventing the structural readjustment of uncompetitive U.S. industries.

Our open international trading sytem has contributed substantially to prosperity in this and other countries since World War II. Throughout the postwar years there have been repeated attacks on the system. There have been times when the losses seemed to outnumber the gains. Yet, on the whole, there was progress. Today, the attacks on the multilateral trading system appear to be stronger than ever. If they are successful, they could cause severe damage to the entire free world.

Retailers are only too well aware that, as Professor Hartman of Harvard has said, protectionism, in whatever form and in whatever industry, is paid for by the consumer in higher prices. More than 200 million American consumers ultimately pay the higher costs generated by additional trade barriers. Protectionism also contributes to inefficiencies in American industry, lost jobs, and the further decline of American competitiveness in world markets.

While imports are not substantial in relationship to total sales in general merchandise retailing, imports are essential to the retailer's mission of satisfying consumer choice. Much imported merchandise is of primary interest to lower income consumers who chould not otherwise afford the quality, style, price and fashion now available through imports in the American market. Further, many import items have no known domestic counterpart.

American retailers have been in the forefront of the movement for a freer exchange of goods. They support this exchange across international borders as they do between all the fifty states. They know that one restriction leads to another; retaliatory actions nearly always "boomerang" against the nation which resorts to them.

American retailers know from careful studies that they and their customers benefit from access to world markets. Shutting off imports of almost any goods inevitably results in higher prices for comparable goods. The consumer is the forgotten person when foreign trade is cut off.

An open, expanding world trade system is the proper goal for U.S. trade policy, because such a system will provide the greatest opportunity for efficient economic growth benefiting all sectors of the economy. Every effort must be expended to achieve a system which is as close to that goal as possible.

The multilateral negotiated-agreement approach to developing a world trade system is the approach most likely to reach this goal.

The achievements of the General Agreement on Tariffs and Trade ("GATT") and related international codes and agreements are testimony to the success of this approach. U.S. law should reflect international agreements and should not seek to impose unilaterally—or even bilaterally—standards and conditions for trade which are more protectionist than the international agreements.

Within the context of multilateral agreements, the retail industry supports fair and complete U.S. enforcement of its rights, especially with regard to practices deemed "unfair" by international agreement.

Retailing also supports laws to provide timely and effective relief for U.S. industries subjected to unfair competition from imports, or, on a temporary basis explicitly tied to adjustment measures.

To the extent that current U.S. laws and multilateral agreements do not adequately address issues in new areas of trade—services, investment, or high technology, for example—or issues related to certain industrial development programs, then the United States should seek multilateral, negotiated solutions to those problems. U.S. unilateral action, whether through enactment of new laws or through negotiation of ad hoc "voluntary" arrangements, is not an acceptable economic policy response.

Retailing's experience in living with the problems of expanding protectionism under the ad hoc, developed nation-dominated Multifiber Arrangement ("MFA") is a vivid, and sad, illustration that such departures from the main multilateral, open market approach of the GATT are a serious mistake.

The domestic textile and apparel industry is one segment of the economy which has received enormous relief under the trade laws. In fact, 25 years of its history are detailed in our written statement.

The failure of this quarter of a century of protection was highlighted in a 1982 study by the University of South Carolina Center for Industry Policy and Strategy which concluded that the domestic textile industry may experience serious problems remaining competitive because it is not preparing for a time when "freer trade might again prevail."

The Council of Wage and Price Stability study in 1978 stated that apparel tariffs costs the American consumer $2.7 billion and quota costs $369 million per year. The study further stated that consumers were paying $81,000 a year for each job protected. Since the time of that study, the restrictions have only gotten more severe, and we suspect that the costs have risen accordingly.

In addition to the bilateral agreements on textile and apparel trade, the United States has, on several occasions, taken unilateral action, with devastating effects on retailers. Since 1980, the government has requested or taken unilateral restraint actions in at least 73 textile categories from numerous countries. Most recently, unilateral action was taken against Chinese textile imports. This was done in a manner violative of the GATT and the MFA.

In the case of the Chinese categories, notice of the restraints came two weeks before they were imposed. There was no indication that the domestic industry was being harmed in any way by such imports, and there continues to be no demonstrated need for the United States to protect this industry, because no detailed factual statements of market disruption have ever been made public. Since these products had already been ordered and paid for months ago, retailers had almost no room to maneuver in order to avoid embargo losses. In a similar case in 1980, the United States imposed unilateral restraints on wool sweaters, despite the fact that the domestic industry was producing at full capacity and retailers could not get their hands on such sweaters fast enough to meet the booming consumer demand.

Another area of concern is the retaliation brought on by the unilateral actions of the United States, as in the recent case of the Chinese. Most dangerous from the United States' perspective, this retaliation is not necessarily limited to the textile sector. Rather, as the Chinese retaliatory measures demonstrate, other commodities are also affected. In the case of the unilateral restraints on Chinese textiles. American farmers, who are already experiencing serious difficulties (e.g., forclosures, depressed prices, grain embargoes), can ill afford to bear the consequences precipitated by the United States' unilateral actions. Clearly, it is in the best interest of the United States to adhere to its international obligations. Unfortunately, the United States has consistently failed to do so with regard to its textile policy. This example should not be repeated for other sectors of the American economy.

On the specific remedy laws under review by this Subcommittee—principally antidumping, countervailing duty, escape clause and market disruption laws—our experience is that these laws have, overall, worked well. However, several areas could be improved.

First, the antidumping laws present a problem as they relate to imports from "non-market economy" ("NME") countries. While retailing believes that such countries should not be allowed to "dump" their products on the U.S. market, we are concerned that the NME provisions now in U.S. law are unworkable. These problems are a very real threat to the development of trade with the People's Republic of China, in particular, and should be carefully reviewed by this Subcommittee.

The principal problem with the NME provisions is that they effectively do not allow use of the NME producers' own costs of production.

The result is that trade with NME countries is inhibited by even rumors of the U.S. industry intent to file a dumping petition. This is a bad result for a variety of reasons. First, American consumers are deprived of high quality, low cost products. Second, marketing plans are seriously disrupted. Third, the dumping laws, which are intended to provide relief from truly unfair pricing by foreign producers, are turned into bludgeons to be used at the whim of the domestic industry. Fourth, U.S. relations with the PRC are further complicated.

Retailers believe that this area of the law deserves careful scrutiny. We would be pleased to work with the Subcommitte on approaches to solving these problems.

Second, retailers wish to point out that the "escape clause" provisions of U.S. law are in violation of Article XIX of the GATT. Although required to do so by GATT, the U.S. law does not require that an injurious increase in imports be related to a prior trade concession, such as a tariff reduction. This is the result of a change in U.S. law made in 1974 in anticipation of changes in international agreements that did not come to fruition. Retailers submit that U.S. law should now be returned to its previous status as consistent with Article XIX of the GATT.

Some proposals for changing the escape clause have been put forward, and we have some preliminary comments on two of these ideas. First, retailers believe that a limitation of Presidential discretion would be a serious mistake, and we, accordingly oppose this proposed change in the law. The basis for our views is that the President's decision in these cases must be allowed to relate the particular instance both to the full range of U.S. domestic economic policies and to U.S. overall trade and foreign policy considerations.

The second area of proposed change is to weaken the required linkage between increased imports and a serious injury suffered by the domestic industry. Under current law, the U.S. ITC must find that the increased imports are a cause of the injury at least as great as any other cause of the injury. To weaken that standard would only insure imposition of relief—or recommendations by the ITC of relief—which would have very little real chance of actually assisting the domestic industry. If the imports are not a substantial cause of injury, then the imposition of import relief is unlikely to effectively assist the domestic industry.

Third, as to countervailing duties, the Commerce Department's misinterpretation of certain provisions of the 1979 Trade Agreements Act is today causing serious problems for retailers and importers. The issue is whether countervailing duties ("CVD") may be applied retroactively, under the administrative review provisions, Section 751.

Retroactivity of CVDs is contrary to the express terms of the law, which provide for suspension of liquidation, administrative review and retroactive application of duties only for antidumping proceedings.

This issue is now being litigated, both in court and as part of on-going Commerce Department proceedings, and retailing is confident that the correct view, as stated above, will prevail. It is nevertheless, an area which the Subcommittee should follow closely to ensure that the 1979 Act is correctly carried out.

Fourth, Section 337 of the Trade Act of 1974 provides authority for the U.S. International Trade Commission ("ITC") to recommend and for the President to impose relief for instances of "unfair import competition" not falling within other trade laws. The provision is most used in the areas of copyright and patent law. As an overall matter, retailing believes that this authority is redundant with other laws and is, therefore, unnecessary.

One aspect of the implementation of this law has been a particular problem, and retailing has a proposal for change. Under current law, preliminary relief may be imposed, and in practice often is imposed, prior to the final determination in the case. Where import volume is significiant, the cost of bonds may be a hardship. If the case is dismissed, it is the importer who is left with this cost, notwithstanding his innocence. Retailing proposes that this provision of the law be changed to provide that the costs of bonds be borne by the complaining party if the case is dismissed.

Thank you for this opportunity. I will be glad to answer any questions.

Chairman GIBBONS. Thank you, Mr. Stevenson.

You have served your purpose well to remind us that there are many problems out in the trade area and the committee has a lot of work ahead of it.

At the risk of repeating myself for the umpteenth time I am going to say that I would prefer to limit the agenda on what action we take this year. I want whatever action we take to be well thought out and extremely well crafted so as to stay within our international obligations and to concentrate our attention on dumping and subsidies.

Does your statement outline further the problems that you are having in the enforcement of the multifiber arrangement? I am interested in that but I don't want to make it a subject of the current agenda of things we are going into.

We may do some other oversight work on that. Does your statement go into that in greater detail?

Mr. STEVENSON. No, it doesn't but we would be happy to provide the committee with our current experience in that area.

Chairman GIBBONS. I imagine your members or your importers end up being the respondent in these cases. Is that true? Do you all have to litigate these cases? Is it your members or somebody else's members who are litigating dumping and countervailing cases?

Mr. TURNBULL. Mr. Chairman, retailers are sometimes involved directly. They are frequently involved indirectly and that is partly because they are buying from importers but the retailers who are importing directly are occasionally involved in these cases.

Chairman GIBBONS. Do you have any suggestions you could make as to how we could reduce the time involved, the uncertainty and expense of these cases from the point of view of the respondent?

Mr. STEVENSON. If international law was clearer and there is more of an objective standard then at least everyone would know what the ground rules are ahead of time.

Chairman **Gibbons**. Certainly I want to say that that is my objective. I cannot make international law and I don't know whether that is fortunate or unfortunate but I can try to influence it. My purpose in influencing it is to try to make it more definite so that people know what the rules are and can abide by the rules. Much the same as a person tries to do in any other contest, is the intent.

Rules that are mutually agreed to and that are fair and just and are observed. That is the only objective I really have in intervening in this matter. I look forward to your participation further in our deliberations.

Do you have questions, Mr. Frenzel?

Mr. **Frenzel**. Yes, I do.

I want to thank the gentleman for his contribution and indicate my agreement with the fact that the person who winds up bearing the lumps and financial cost of protectionism is the consumer. We have seen the same in Japan where we have wondered about the Japanese consumer and why that person never complained except about cadmium in the tuna fish or items of health and safety.

We notice the same with consumer movements here. They seem to be very concerned about health and safety and other things that nobody cares about like unit pricing but when it comes down to being robbed by a protectionist proposal such as exists now in automobiles, the consumer seems to meekly stand aside.

Can you explain why that is? They are going to pay that huge premium that they are obliged to pay.

Mr. **Stevenson**. I wish we knew the answer to that. Certainly they have other agenda items and it is hard to realize why they don't come forward. There are some consumers, the Consumers For World Trade, for example, that try to present a consumer viewpoint but the majority of the consumer groups are involved with other matters that seem to preoccupy their time.

Mr. **Frenzel**. I must concur.

You mentioned the nonmarket problem and indicated that your industry didn't receive a large proportion of its stocks from abroad. Could you tell us what the situation is with respect to your own company?

Mr. **Stevenson**. Yes, about 10 to 12 percent of what we sell we import.

Mr. **Frenzel**. The allegation is usually, from the needle threads, that you are frequently not passing on advantages which you receive.

Is that the experience of your company?

Mr. **Stevenson**. No, there was an extensive study done by William Cline at the Brookings Institute, that on comparable products there is about an 11 percent savings over domestic products in a broad market basket of items and in the lower income-related items, the percentage goes up to about 13 percent.

So those savings are passed on to the consumer.

Mr. **Frenzel**. The markups are comparable given unit price by normal strategies of your marketing situation.

Mr. **Stevenson**. That is correct.

Mr. **Frenzel**. That is good to know. I appreciate your testimony and we are delighted to hear from somebody who has a consumer viewpoint. Thank you very much.

Chairman GIBBONS. Thank you.

Mr. STEVENSON. Thank you very much.

Chairman GIBBONS. You know, I realize our next witnesses will represent the automobile importers but I often have said it takes a certain type of arrogance to say to the consumer, you get out there and earn your money, pay your taxes and then you buy what we tell you you got to buy—I am talking about Members of Congress telling people that. That is certainly not my attitude.

I think people ought to be able to buy what they want to buy after they earn their money and pay their taxes.

I just want to say, reflecting Mr. Frenzel's concerns, we don't find that burning concern in the minds of the consumer. I don't know why that is.

Mr. STEVENSON. I think probably a lot of it is because it is diffused over a great many people where the headline-grabbing items are where a plant is having problems in competing. It may not be foreign competition that is the problem but that is one of the items listed when there may be other conditions they may not be keeping up with technology, or their market may have changed, or their approach may be wrong. There are a lot of things that could occur that have led to their problem.

Being in retail we are in a competitive business, and certainly we don't seek any protection from competition.

Chairman GIBBONS. I want to assure you that we are not here to help them, help the people who have injured themselves by either their lack of industry or lack of foresight or their lack of sacrifice or by their excessive greed.

I want to try to help those that I think are being treated unfairly because of pernicious practices, practices that we have all agreed as civilized nations are outlawed. That is what I seek to confine our deliberations to.

Thank you very much.

Mr. STEVENSON. Thank you.

[The following additional statement was subsequently received:]

STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION AND THE AMERICAN RETAIL FEDERATION

A Introduction

The National Retail Merchants Association ("NRMA")[1] and the American Retail Federation ("ARF")[2] are pleased to submit this statement providing our views on various matters related to U.S. trade remedy laws and their implementation. In light of the confusion which exists with respect to the proper trade policy for the United States, this Subcommittee is to be commended for undertaking a careful analysis of the existing remedies available to combat unfair trade practices and to alleviate temporary injury caused by fair competition from imports.

As a predicate to the specific comments provided below, the following are the principals which retailing believes should form the basis for U.S. trade policy:

(1) The proper goal for U.S. trade policy is an open, expanding world trade system, because such a system will provide the greatest opportunity for efficient economic growth benefiting all sectors of the economy. The United States must expend every effort to achieve a system which is as close to that goal as possible.

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[1] NRMA is a national, not-for-profit trade association composed of over 3,700 members operating more than 45,000 department, chain, and specialty stores in the general merchandise retail industry. Our members have an aggregate annual sales volume in excess of $150 billion and employ over 2.5 million workers.

[2] ARF's membership consists of 33 national retail trade associations, 50 state retail associations, the Greater Washington Board of Trade, as well as corporate members. Through its members, ARF represents more than one million retail establishments.

(2) The multilateral, negotiated-agreement approach to developing a world trade system is the approach most likely to reach this goal. The achievements of the General Agreement on Tariffs and Trade and related international codes and agreements are testimony to the success of this approach.

(3) U.S. law should reflect international agreements and should not seek to impose unilaterally -- or even bilaterally -- standards and conditions for trade which are more protectionist than the international agreements.

(4) Within the context of multilateral agreements, the U.S. should fairly and completely enforce its rights especially with regard to practices deemed "unfair" by international agreement.

(5) To the extent that current U.S. laws and multilateral agreements do not adequately address issues in new areas of trade -- services, investment, or high technology, for example -- or issues related to certain industrial development programs, then the U.S. should seek negotiations.

Retailers and others who support these principles have become increasingly alarmed by growing demands for protection. These demands, and the trading system envisioned by their advocates, threaten the trade system which has developed over the past quarter century and which has been the basis for the unprecedented expansion of worldwide trade. A return to the nationalism and isolationism of the 1930's would be a grave mistake. Instead of erecting new barriers to competition, the United States should aggressively develop our own competitiveness and seek to reduce trade barriers worldwide.

The benefits of the open international trading system are of particular importance to the American consumer. While imports are not substantial in relation to total sales in general merchandise retailing, imports are an essential part of a retailer's ability to succeed in the mission of satisfying consumer choice. Much imported merchandise is of primary interest to lower income consumers, who could not otherwise afford the quality, style, price and fashion now available through imports in the American market. Further, many imported items have no domestic counterparts.

Conversely, the costs of import "protections" are very large indeed. In 1978, the Council on Wage and Price Stability found that the tariffs on apparel alone cost the American consumer $2.7 billion per year and that the quotas then existing cost an additional $369 million per year. That study further found that consumers at that time were payig $81,000 per year for each job protected. Since the quota system has become even more protectionist, the cost to consumers has almost certainly risen since that study.

U.S. unilateral retaliation or other regimes of protection, whether accomplished through enactment of new laws or through negotiation of ad hoc "voluntary" arrangements, is simply not an acceptable response, because they will lead only to overall economic inefficiency, distortion and, ultimately, decline. Our own experience in living with the problems of expanding protectionism under the ad hoc, developed nation-dominated Multifiber Arrangement ("MFA") is a vivid, and sad, illustration that such departures from the main multilateral, open market approach of the GATT are a serious mistake.

Because the textile and apparel example has been so disastrous, and yet is cited by other industries seeking protection as the "model" for use in protecting those other industries, the first section of our comments, below, explains at some length the problems that the MFA system has spawned and the history of encroaching protectionism that has put us where we are today. Following that section, this statement provides several brief comments on problems we see in the trade remedy laws and their administration.

B. The Protections Afforded the Textile and Apparel Industries Should Not Be Repeated

The domestic textile and apparel industry is one segment of the economy which has received enormous relief under the trade laws. These protections have helped no one, and should therefore not be repeated for other segments of the economy.

Retailers have lost directly because they have not been able to obtain goods ordered and paid for several months ago. As a result, retailers have lost sales, and their costs have been increased.

Consumers have been deprived of choices in the marketplace because of retailers' sharply limited supply sources. Restrictions on quantities in the marketplace also have a very real upward effect on the prices paid by consumers.

Sadly, the supposed counterbalancing benefit to other sectors of the economy has been, in fact, illusory. Even the textile industry is harmed. One clear result of these import restraints is that foreign manufacturers have been encouraged to "trade-up" into market segments where the United States manufacturers would normally do well, actually increasing competition from imports.[3] Even to the extent these protections have "succeeded" in the short-run by decreasing competition, the result has been that the domestic industry is stagnating -- it has no incentive to become competitive.

1. History of Growth of Protectionism for Textile and Apparel Industries

The following is a brief recitation of this 25 year saga:

1. 1957--Japan agreed "voluntarily" to limit exports to cotton textile products to the United States.[4]
2. 1961--The Kennedy Administration, after having politicized the textile issue in the presidential campaign, instigated negotiation of the Short Term

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[3] "Trading up" is the decision by a manufacturer to sell a higher value product, in order to make more money even though the total number of items sold remains constant. This phenomenon is regularly observed in situations where a quota limits the quantitiy of items which may be sold.

[4] D. Keesing & M. Wolf, Textile Quotas against Developing Countries 15 (1980) (hereinafter cited as "Keesing & Wolf").

Arrangement on Cotton Textiles, to redress the problem of "market disruption due to sudden large increases of imports from low-wage countries."[5]

3. 1962--The Long Term Arrangement on Cotton Textiles was signed.[6] It provided a framework for countries to limit imports from any source in any category of cotton textile product which "cause or threaten to cause disruption in the market of the importing country."[7]

4. 1971--Imports of wool and man-made fiber products were brought under restraint when Japan, after resisting United States pressure since President Nixon made extension of such restrictions an issue in his 1968 campaign, agreed to limit its exports to the United States of these products. The consequence of this long dispute had a disastrous effect on United States-Japan relations.[8]

5. 1974--The Arrangement Regarding International Trade in Textiles, or the Multi-Fiber Arrangement ("MFA"),[9] a comprehensive agreement covering cotton, wool, and man-made fibers, became effective.[10] In an attempt to provide some balance in the protectionist regime of the MFA, the parties agreed that the goal of the MFA would be the

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[5] Id. at 16.

[6] By late 1963, the United States had imposed import restrictions against eighteen countries pursuant to emergency requests. There were restrictions against some 37 countries by 1972. Id. at 38-9.

[7] I. Destler, H. Fukui, H. Sato, The Textile Wrangle (1979), at 32 (hereinafter cited as "Textile Wrangle").

[8] See generally Id.

[9] Dec. 20, 1973, 25 U.S.T. 1001, T.I.A.S. No. 7840.

[10] The majority of bilateral textile agreements between the United States and its trading partners have been made under the authority extended under MFA. Since China is not a signatory of this agreement, the bilateral agreement with the PRC was entered into pursuant to Section 204 of the Agricultural Act of 1956, 7 U.S.C. § 1854, the same authority under which the United States entered into the MFA.

"expansion of trade, the reduction of barriers to such trade and the progressive liberalization of world trade in textile products."[11]

6. January 1, 1978--The first extension of the MFA became effective.[12] In response to the demand of the Europeans, the Protocol of Extension to the MFA contained a clause which allowed the negotiation of bilateral agreements which provided temporary "jointly agreed reasonable departures from particular elements [of the MFA] in particular cases."[13] This clause was intended to be used only in extreme situations, but in practice the bilateral agreements negotiated by the United States after MFA II were much stricter than those previously negotiated.[14]

7. 1979--The Carter Administration issued its "White Paper" on textiles. This document was cited by the domestic textile industry and unions as a promise to implement a highly restrictive trade policy. Indeed, it caused the United States to renegotiate all its major bilateral agreements to impose stricter quotas.

8. 1981--The MFA was extended through July 31, 1986,[15] and has resulted in the negotiation by the United

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[11] Article I, Para. 2.

[12] Protocol Extending the Arrangement Regarding International Trade in Textiles, Dec. 14, 1977, 29 U.S.T. 2287, T.I.A.S. No. 8839.

[13] Protocol, MFA II, at Para. 5. 3. These departures were expressly made temporary by the Protocol which also provided "that participants concerned shall return in the shortest possible time to the framework of the Arrangement." Id. at Para. 5.4.

[14] For example, the American bilateral agreements with the "big three" developing countries at the time, Hong Kong, Taiwan, and South Korea, allowed little initial quota growth in 1978 over the 1977 level, despite the MFA's requirement that quotas generally increase by at least six percent. Furthermore, the growth rates through 1982 were well below six percent in many more products than in the previous bilateral, and provided zero growth in exceptional products for the first time. Keesing & Wolf, at 41, 63.

[15] Protocol Extending the Arrangement Regarding International Trade in Textiles, Dec. 22, 1981, T.I.A.S. No. 10323.

States of even more restrictive bilaterals.[16]

The failure of this quarter of a century of protection was highlighted in a 1982 study by the University of South Carolina Center for Industry Policy and Strategy which concluded that the domestic textile industry may experience serious problems remaining competitive because it is not preparing for a time when "freer trade might again prevail."[17] The study predicted:

> The U.S. policy of promoting protectionism without restructuring may create long run problems if the other countries' industries are so greatly assisted that they become more competitive. Less world interest would exist for agreements resembling the MFA, and the United States might be pressured to drop its textile barriers. If successful, it might then become too late for the U.S. industry to initiate its own restructuring, and its textile industry could shrink considerably in the environment of these new economic realities.[18]

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[16] For example, the bilateral textile agreements recently negotiated between the United States and three of its major Asian sources of textile imports, Taiwan, Hong Kong, and South Korea, allowed these countries to increase their exports to the United States at a rate of 0.5 to 1.5 percent per year from the previous year's level for sensitive categories, and at higher rates where the domestic industry does not consider the products to be of concern. The Chinese reportedly were offered an increase of approximately 1.5 percent per year. China Textile Warning, N.Y. Times, Jan. 17, 1983, D 5; Myths That Textiles Weave, N.Y. Times, Jan. 7, 1983, A 24; Wren, supra N.Y. Times, Jan. 3, 1983.

[17] University of South Carolina, Center for Industry Policy and Strategy, The U.S. Textile Mill Products Industry: Strategies for the 1980's and Beyond 6-20 (1982). The study compared United States textile policy with such policies in countries in the European Community and Asia.

[18] *Id.* at 6-22.

2. Harm to Retailers and Consumers

This expanding regime of protection has harmed retailers and consumers. In order to understand the nature and extent of the harm, it is important to know how retailers do business in this country. Retailers treat imports as a part of their overall merchandising programs, which are set on the basis of anticipated consumer demand and analyses of the selection, quality, availability and price of goods in the market. The relative weight which is assigned to given factors varies from retailer to retailer, product to product, and year to year. In an otherwise perfect world, retailers purchase goods from those suppliers who offer the combinations of these factors which most suits their needs. The goal of the merchandising program is, of course, to assure success for the retailer, with resulting benefits to its customers and all of its suppliers, as well as to its own management and owners.

In this context, imports are not a special category. They are not placed in separate departments of a store simply because they are imports, and those who plan merchandising programs do not treat them separately. The many sources of goods from abroad are evaluated in the same way as domestic suppliers. Non-United States sources have certain built-in disadvantages, *e.g.*, the higher costs of doing business with them (travel, telephone, goods transportation, etc.), the long lead times necessary for orders, their lack of flexibility on changes in orders (quantities, delivery dates, cancellations, etc.), and the need to arrange payment substantially in advance of receipt of the goods. For these reasons, and because American manufacturers do a generally excellent job of providing the necessary array of goods, retailers buy the vast bulk of their goods from American suppliers. On the other hand, retailers also choose to purchase goods from a foreign supplier when, in particular instances, other factors outweigh the disadvantages. It is also of note that, in many instances, retailers buy imported merchandise from American apparel companies, rather than directly from foreign sources. In fact, United States apparel companies have become an increasing factor in supplying imported items, using imports to add diversity to their product lines. The calls for more and more "protection" from imports by these same companies is, at least, ironic.

Once a decision is made to purchase an item, the appropriate buyer arranges the purchase. For an imported item, this is a more complicated process than it is for a domestic purchase. First, identifying sources of products is a more difficult task. Not only do manufacturers enter and leave the market, as with domestic producers, but they do so in numerous, far-flung countries, each with its own business customs and arrangements, not to mention the inevitable language barriers. Second, the decision to purchase must be made further in advance, often as long as a year ahead of delivery to the United States or the first sale to a consumer. Third, the terms of sale often involve using an irrevocable letter of credit. This holds guaranteed funds for the manufacturers and has the effect of transferring the ownership of the product to the retailer at the time the letter of credit is transferred, even though the product is not yet made. So long as the foreign manufacturer supplies the correct item at the appointed time, the money represented by the letter will be automatically transferred to it. Thus, the process is out of the retailer's hands months before the garments are even finished. This makes later cancellation of the order next to impossible.

Finally, the United States import restriction system must be taken account of. The problems retailers have had with this system are discussed below, and it is noted here only to underscore the fact that existing quotas are factors which further complicate the retailer's normal business operation. The possibility of quotas imposed after orders are placed and letters of credit are issued is an even more difficult problem to handle.

Where no restraints exist on a given product from a particular country, the retailer bears the substantial risk that the United States will subject such products to unilateral restraint.[19] And when the goods are restricted suddenly by the

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[19] For example, under the expired bilateral textile agreement with the People's Republic of China ("China"), both parties agreed to specific quotas on certain categories of products. In addition, a "call" system was imposed on other textile products under which the United States could request consultations whenever it believed that imports from the PRC in categories not covered by a specific limitation in the agreement were threatening to impede, due to market disruption, the orderly development of trade between the two countries.

After such a request, consultations would begin within 30 (footnote continued)

United States (and usually without justification because of the manner in which the United States textile program is administered, making such United States actions unpredictable, no matter how closely imports are monitored by foreign manufacturers and retailers), retailers who use quota levels in making their buying plans and who are affected by restraint levels, must contend with rapidly filling restraint levels, cancel their orders if they can, or gamble that the restraints will be lifted soon. Where the terms of the sale involve irrevocable letters of credit, which is often the case, the orders cannot be cancelled. Once the goods are shipped to the United States, retailers must pay for the warehousing and the bonding of the stored goods. If such goods cannot be sold eventually in the United States, the shipping, storage, and bonding costs are lost. In addition, retailers suffer lost sales, loss of reputation, and the

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(footnote continued from previous page)
days to resolve the problem within 90 days of receipt of the request. During the 90-day consultation period, China would limit exports of the product called to a level no greater than 35 percent of United States imports during the most recent 12-month period for which United States data were available. If no mutually satisfactory solution was reached during the 90-day period, China would limit its exports of the called category to a level of trade (based on United States imports) during the first 12 of the most recent 14 months preceding the date of the request for consultations, plus 20 percent for man-made fiber and cotton products and 6 percent for wool products. This limit would be in effect for the 12-month period beginning the day after the suspension of consultations (i.e., the 91st day after the request for consultations). Agreement Relating to Trade In Cotton, Wool, and Man-Made Fiber Textiles and Textile Products, Sept. 17, 1980, United States-China, Para 8, T.I.A.S. No. 9820.

The call system was invoked for 20 categories of textile products since the effective date of the bilateral agreement. China agreed to quotas in the consultation involving six categories, but did not agree in 14.

destruction of market demand for the restrained goods. They will have lost interest payments made on loans to purchase the restrained goods, and will have had to purchase substitute merchandise to sell in their stead.

The consumer, of course, ends up paying more for fewer choices as a result of retailers' limited supply sources. And, when retailers' businesses are harmed, the American workers they employ also suffer.

3. Harm to Domestic Textile Manufacturers

Domestic manufacturers, the group trade restraints are. intended to protect, are also harmed by the United States' protectionist textile policy: First, quotas force foreign manufacturers to trade up into market segments where United States manufacturers would normally do well. Second, to the extent such protections "succeed" in the short-run (and supplies of foreign goods are curtailed) United States manufacturers have no incentive to make themselves competitive.

Quotas force foreign manufacturers to trade-up because that is the only way they can make more profit. Since quotas limit the number of products a foreign manufacturer can make for sale in the United States, such manufacturers cannot make higher profits with increased volumes. They also can not increase their prices too high because their targeted market, the low income purchaser, will simply not buy the goods. Thus, to increase profits, foreign manufacturers make more expensive goods because they can make more money selling these goods -- even on the same percentage profit margins.

Once a foreign manufacturer trades-up, it is more likely to be selling in the market segment supplied already by domestic producers, often leaving a lower-priced market where U.S. producers do not compete. The result is greater competitive pressures on United States manufacturers. To the extent that foreign manufacturers have natural comparative advantages, through lower labor costs, for example, they can sell these expensive items more cheaply, or at greater profit margins, than can their domestic counterparts. The domestic producers are thereby disadvantaged by the very actions that are supposed to protect them.

As a result, foreign manufacturers are not doing what they do best -- making low cost items because of their low labor costs -- and United States manufacturers are not doing what they do best -- making higher priced items with their more highly skilled labor force. The consequences in the United States market are that low-income consumers are offered fewer choices of low-cost products, retailers cannot serve the low-income market because no one is making the goods for them to sell, and the domestic industry is subjected to increased competition.

To the extent that these protections do, in certain areas, insulate the domestic industry from foreign competition in the short-run, United States manufacturers are harmed severely in the long-run. This is demonstrated by the longevity of the United States' textile program. At every step for 25 years, the United States has proclaimed that "just a little more protection" is necessary for our industry to adjust. In fact, protections have only increased over the years, and the domestic industry has been given no incentive to make the adjustments necessary to compete.

4. Textile/Apparel Program Violates U.S. Law and GATT.

Virtually all unilateral restraints imposed by the United States, including those now limiting Chinese textile imports, have been effected in a manner violative of GATT, the MFA, and U.S. law. The result has been serious disruption of the businesses of American retailers and, in at least one case, retaliation by a foreign country to the detriment of other American industries and their workers.

The litany of legal misdeeds by the United States is fully presented in the complaint and related materials filed by the Textile and Apparel Group of the American Associations of Exporters and Importers ("TAG"). The retail industry supports TAG in its efforts and commend TAG's materials to the Subcommittee for a complete review of the legal infirmities in the U.S. textile and apparel import program. For purposes of this statement, we will review only two major examples of how U.S. actions and policies fail to comport with international agreements and U.S. law.

First, the MFA requires that import restrictions be sought in bilateral negotiations or imposed by unilateral action only where the imports to be restricted are causing "market disruption." This term is defined in Annex A: "serious damage to domestic producers or actual threat thereof . . . demonstrably . . . caused by a sharp and substantial increase or imminent increase of imports of particular products from particular sources . . . offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country." The experience of such damage is required under Annex A to be determined,

> on the basis of an examination of the appropriate factors having a bearing on the evolution of the state of the industry in question such as: turnover, market share, profits, export performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity and investments. No one or several of these factors can necessarily give decisive guidance.[20]

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[20] The MFA's requirements in Annex A parallel the escape clauses in GATT Article XIX and Section 201 of the Trade Act of 1974, 19 U.S.C. § 2251, but the United States has never faced its obligations under the MFA in the way it implements its own escape clause. As with GATT Article XIX, Article IV of the MFA allows contracting parties to impose import restrictions on a bilateral basis. However, such restrictions were intended to be only temporary. MFA, Article I, para. 1. The unilateral restraints authorized by the MFA were to be "resorted to sparingly," and were to be "limited to the precise products and to countries whose exports of such products are causing market disruption as defined in Annex A . . ." MFA, Article III, para. 2. The MFA further requires that any unilateral actions taken by a contracting party be accompanied by a "detailed factual statement of the reasons and justification for the request, including the latest data concerning elements of market disruption." MFA, Article III, para. 3.

In the face of this specific, detailed required finding, the United States has consistently failed to make any reasoned finding of actual or threatened market disruption using information on the performance or health of the domestic industry. In fact, the United States has admitted that it has no idea of the condition of the domestic industry because its data are not accurate, they do not give sufficient detail, they are not compatible with the textile category system, and they are too old to be of much use. These problems are compounded with regard to apparel, the United States has conceded, because there exists no sales or product price data for apparel.[21]

What the United States has done is to find "market disruption" simply on the basis of increased import levels. Thus, import restrictions have been imposed where no reasonable person examining the real market could ever find market disruption. This whole approach, and each specific application of it, including when unilateral restraints were imposed on Chinese textiles and generally in the manner in which it implements its entire textile program, is in violation of its international legal obligations.

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[21] United States Department of Commerce, Solicitation No. SA-RSB-82-0011. See Letter from Paul T. O'Day, Deputy Assistant Director For Textiles and Apparel, Department of Commerce, to Michael P. Daniels (Feb. 19, 1982) (confirming that "too often" available information on the domestic conditions in the textile and apparel industries is "spotty, inconsistent, or out of date").

Second, the actions by the United States violate the fundamental procedural guarantees in the Administrative Procedures Act ("APA") and the Constitution. The Committee for the Implementation of Textile Agreements ("CITA"), the agency responsible for supervising the implementation of the United States' textile agreements, generally fails to provide interested parties with adequate notice of the United States' intention to request consultations and to take unilateral action, fails to give interested parties a real opportunity to comment, and fails to provide detailed factual statements of reasons supporting unilateral restraint determinations. Since CITA's unilateral market disruption determinations are administrative actions, they are subject to the procedural requirements of Section 553 of the APA. CITA's failure to abide by the requirements of the APA is arbitrary and capricious, and abuse of administrative discretion, and violative of the Due Process Clause of the Fifth Amendment.[22]

These serious violations of law and international agreements have very practical implications in the marketplace. Retailers have no way of ever predicting what the United States will do. For example, no retailer could possibly have planned its purchases of the four new categories of Chinese textile products now subject to unilateral restraint which had never before been subject to any limitations. Notice of the restraints came two weeks before they were imposed.[23] There was no indication that the domestic industry was being harmed in any way by such imports, and there continues to be no demonstrated need for the United States to protect this industry because no detailed factual statements of market disruption has ever been made public. Since these products had already been ordered and paid for months ago, retailers had almost no room to maneuver in order to avoid losses. In a similar case in 1980, the United States imposed unilateral restraints on wool sweaters, despite the fact that the domestic industry was producing at full capacity and retailers could not get their hands on such sweaters fast enough to meet the booming consumer demand.

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[22] *See* *Associated Dry Goods Corp.* v. *United States*, 515 F. Supp. 775 (Ct. Int'l Trade 1981) (denying ADG motion for preliminary injunction), 521 F. Supp. 473 (Ct. Int'l Trade 1981) (upholding ADG's basic claim), *appeal dismissed*, Slip op. No. 81-70, (C.C.P.A. 1981) (remanded to Ct. Int'l Trade), *partially vacated* 533 F. Supp. 1343 (Ct. Int'l Trade 1982) (order to release goods vacated, opinion on merits upheld), *vacated*, 682 F.2d 212 (C.C.P.A. 1982) (remanded with directions to dismiss as moot).

The United States was the primary mover in the establishment of the current international law system, and it remains a significant force in the maintenance of that system today. By continuing to abandon the post-war trading system for the benefit of a highly vocal special interest group, the United States is poorly positioned to prevent protectionist actions by our trading partners. United States quotas invite other countries to impose their own quotas, and they also inevitably bring retaliation, as in the case of the Chinese. Most dangerous from the United States' perspective, this retaliation is not necessarily limited to the textile sector. Rather, as the Chinese retaliatory measures demonstrate, other commodities are also affected. In the case of the unilateral restraints on Chinese textiles, American farmers, who are already experiencing serious difficulties (e.g., foreclosures, depressed prices, grain embargoes), can ill afford to bear the consequences precipitated by the United States' actions. Clearly, it is the best interests of the United States to adhere to its international obligations. Unfortunately, the United States has consistently failed to do so with regard to its textile policy. This example should not be repeated for other sectors of the American economy.

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[23] 47 Fed. Reg. 57748 (Dec. 28, 1982).

C. Comments on Specific Remedies

As stated above, retailing supports U.S. adoption and implementation of laws to provide timely and effective relief for U.S. industries subjected to unfair competition from imports or, on a temporary basis explicitly tied to adjustment measures, to fair competition under the "escape clause" provisions of GATT.

Overall, our experience is that these laws -- principally, the antidumping, countervailing duty, escape clause, and market disruption laws -- have worked well to carry out these objectives. Not all petitions have resulted in imposition of import relief measures, but that should not be the basis for evaluating these laws. Moreover, the time, effort, and expense necessary for a domestic industry to make its case is minimal under the current law. In our experience, the problems relate to the fact that the laws work "too well," protecting the domestic industry before the case is proven or providing relief where none is warranted. As a practical matter, the mere filing of a petition often disrupts the market for the imports at issue, achieving much of the petitioner's objective without need for any further action. Further, once a petition is accepted, the government takes on much of the burden of collecting and analyzing information relevant to the proceeding.

The comments, below, relate to certain specific issues which the retail industry believes merit the attention of the Subcommittee and to some issues raised by others on which retailing has specific views.

1. Antidumping Law.

The provisions of the antidumping law related to imports from "non-market economy" ("NME") countries are a major area of the law in need of revision. While retailing believes that such countries should not be allowed to "dump" their products on the U.S. market, any more than any other foreign producer, we are concerned that the NME provisions now in U.S. law are both unworkable and unfair. These problems are a very real threat to the development of trade with the People's Republic of China, in particular, and should be carefully reviewed by this Subcommittee.

The principal problem with the NME provisions is that they remove any certainty for either the NME producers or the U.S. importers. Because the provisions do not allow use of the NME producers' own costs of production or home market or third country sales prices, the producer is not able to determine whether its prices will be determined to be "dumping". Indeed, that determination is largely based on the happenstance of which third country producer (or "surrogate") cooperates with the Commerce Department during an investigation.

The result is that trade with NME countries is inhibited by even rumors of U.S. industry intent to file a dumping petition. In the textile and apparel area, the existence of the dumping proceedings on printcloth and shop towels has combined with the general uncertainty created by the lack of agreement on an overall textile agreement to produce a very difficult trade climate vis a vis the People's Republic of China. This is a bad result for a variety of reasons. First, American consumers are deprived of high quality, low cost products. Second, American retailers' marketing plans are seriously disrupted. Third, the dumping laws, which are intended to provide relief from truly unfair pricing by foreign producers, are turned into bludgeons to be used at the whim of the domestic industry. Fourth, U.S. relations with the PRC are further complicated.

The retail industry believes that this area of the law deserves careful scrutiny. We would be pleased to work with the Subcommittee on approaches to solving these problems.

2. "Escape Clause"

The United States' "escape clause" provisions, which are supposed to provide extraordinary relief to industries suffering serious injury due to increased imports -- Section 201 of the Trade Act of 1974 -- have generally produced the results intended by Congress. The retail industry wishes to point out, however, that the current provisions of U.S. law are in violation of Article XIX of the GATT in that the U.S. law does not require that the increase in imports be related to a trade concession, such as a tariff reduction. This is the result of a change in U.S. law made in 1974 in expectation of negotiation of a multilateral "Safeguards Code" as part of the Tokyo Round of negotiations. Since no such Code was concluded during the Tokyo Round and since none is apparent on the horizon today, retailing submits that U.S. law should be returned to its previous status as consistent with Article XIX of the GATT. In any event, the U.S. should resist any suggestion that this law be amended to be even more in conflict with GATT provisions.

Some proposals for changing the escape clause have been put forward, and we have the following preliminary comments on two of these ideas. First, there is currently circulating a proposal to limit the discretion of the President in his final decision on the imposition of import relief. The retail industry believe that any such limitations would be a serious mistake, and we, accordingly, oppose this proposed change in the law. The basis for our views is that the President's decision in these cases must be allowed to relate the particular instance both to the full range of U.S. domestic economic policies and to U.S. overall trade and foreign policy considerations.

The President must be allowed to consider whether other economic policies will work at least as effectively as import relief in promoting the adjustment of the particular industry to competition from all sources and whether imposition of import relief may frustrate programs for the adjustment of various sectors of the U.S. economy to worldwide trading conditions.

The President must also be afforded the discretion to modify relief proposed by the ITC or to refuse to impose any relief, based on trade or foreign policy considerations. In the recent heavyweight motorcycle case, for example, the President was able to avert serious unfairness and a potential international incident by fashioning an exemption from the increased tariff for imports from low-volume supplier countries. If the President were allowed only to impose the relief recommended by the ITC, several European nations could have raised serious questions about the fairness of our laws. Similarly, the President may appropriately refuse to impose any relief in order to further broader trade or foreign policy goals. Finally, the President, unlike the ITC, must be cognizant of the right of other countries to retaliate against any American import restrictions imposed under the escape clause. These retaliatory acts may harm the American industries subject to them far more than the "protected" industry is helped by the imposition of import relief.

The second area of proposed change is to weaken the required linkage between the increased imports and the serious injury suffered by the domestic industry. Under current law, the ITC must find that the increased imports are a cause of the injury at least as great as any other cause of the injury. To weaken that standard would only insure imposition of relief -- or recommendation by the ITC of relief -- that would have very little chance of actually assisting the domestic industry. If the imports are not a substantial cause of injury, then the imposition of import relief is unlikely to materially assist the domestic industry.

3. Countervailing Duties.

The Commerce Department's misinterpretation of certain provisions of the 1979 Trade Agreements Act is today causing serious problems for retailers and importers. The issue is whether countervailing duties ("CVD") may be applied retroactively, under the administrative review provisions, Section 751. The Commerce Department apparently believes that that section allows it to suspend liquidation of entries subject to a CVD order pending a subsequent administrative review of the subsidies. The effect of this view is that Commerce is just now setting "final" CVDs for entries made as long ago as 1979, for goods which have already entered and left the stream of commerce in the United States.

This is contrary to the express terms of the law, which provide for such suspension of liquidation, administrative review, and retroactive application of duties only for antidumping proceedings, works a very significant hardship on retailers who sold the goods expecting that the original deposit rate would be the final rate. Ironically, this "post hoc" system also deprives the domestic industry of the effective protection it is entitled to under the law, because the purpose of the law is to bring the costs of subsidized goods to their "real" levels so that those costs are reflected in actual prices on the market. Since the goods now being subjected to huge increases in CVD levels were sold long ago, the price effect of the CVD was that of the original deposit rate, and the CVD increases are merely penalties on innocent parties, the retailers and importers.

Conceptually, there is no basis for this kind of retroactive system in the CVD area. Unlike dumping, which is an entry-by-entry comparison of prices for comparable products sold in the U.S. and in the home market of the foreign producer, the countervailing duty law is an attempt to counteract known subsidy practices of a foreign government. While the nature and extent of such practices may change from time to time, requiring adjustment of the CVD level, the CVD should be the same so long as the practices remain the same. Once the CVD is set to counteract a given set of practices, there is no need for later review and adjustment with respect to specific entries.

This issue is now being litigated, both in court and as part of on-going Commerce Department proceedings, and retailing is confident that the correct view, as stated above, will prevail. It is nevertheless, an area which the Subcommittee should follow closely to insure that the 1979 Act is correctly carried out.

4. Section 337.

Section 337 of the Trade Act of 1974 provides authority for the U.S. International Trade Commission ("ITC") to recommend and for the President to impose relief for instances of "unfair import competition" not falling within other trade laws. The provision is most used in the areas of copyright and patent law. As an overall matter, the retail industry believes that this authority is redundant with other laws and is, therefore, unnecessary.

With respect to its specific functioning, retailing has one proposal for change. Under current law, preliminary relief may be imposed, and in practice often is imposed, prior to the final determination in the case. While preliminary relief, usually in the form of bonds which are forfeited in the event of an adverse final determination, may be necessary in some cases to prevent "flooding" of imports during the pendancy of the case, the requirements of such relief often work a serious financial hardship for the importers even in cases that are ultimately dismissed. Where import volume is significant, the cost of bonds above may be a hardship. If the case is dismissed, it is the importer who is left with this cost, notwithstanding his innocence. Retailing proposes that this provision of the law be changed to provide that the costs of bonds be borne by the complaining party if the case is dismissed.

Chairman GIBBONS. Next, the American International Automobile Dealers Association, Mr. Robert M. McElwaine.

I see you have staff with you. In fact you have the chairman with you.

Mr. McELWAINE. That is right, sir. I am accompanied by Mr. Tom Nemet, chairman of the board of our organization, an imported automobile dealer from Jamaica, New York, and also by counsel, Mr. Bart Fisher of Georgetown University and of Patton, Boggs and Blow.

I would like to ask Mr. Nemet, if I may, to make a brief introductory remark.

Chairman GIBBONS. All right, sir.

STATEMENT OF THOMAS NEMET, CHAIRMAN OF THE BOARD, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. NEMET. Good morning, Mr. Chairman, and Congressman Frenzel.

It is a privilege to appear before you today.

Mr. Chairman, for the record I am Thomas Nemet, chairman of AIADA, an imported automobile dealer from Jamaica, New York. As an American businessman, as an employer of 83 American workers in my dealership, a businessman engaged in sale of imported products, I have been protected in the past by an act of Congress that required that anyone who wishes to curtail or shut down my business must first establish that the existence of my business is a substantial cause of injury to him.

There is a move afoot to reduce the standard of injury so that my business and my fellow dealers' could be closed down or sharply reduced, and the employees will be forced to unemployment if simply domestically produced competition could establish that the continued existence of our business caused any degree of injury to their operation.

I find such a scheme contrary to everything that I have ever learned about America, the American creed of fair play, and equal protection under the law.

Mr. Chairman, I came to the United States as a 12-year-old child from Romania after World War II. My father and my family were engaged in distributing American automobiles in that country. My father's business was taken away from him by an act of law in Romania. He was incarcerated for being an American.

I came to this country, sir, and I had a dream. I had a dream that I would like to continue to be in a family business, become an automobile dealer, and to reestablish my father's good name.

I worked hard to accomplish this dream. I became an imported car dealer because I believed that a small car provided great transportation with value. I am not a lawyer, Mr. Chairman, I am not an expert on economics and world trade, and I must rely on my colleagues with me to examine and explain the legal and economic objectives of these proposals.

I am a businessman. However, I am an American. I ask this committee to question seriously the legislative changes in our trade laws that will expose the consumer to exploitation and make protection from competition virtually guaranteed for any industry which chooses to seek it.

Thank you, sir.

Chairman GIBBONS. Thank you, sir.

STATEMENT OF ROBERT M. McELWAINE, PRESIDENT, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. McELWAINE. Mr. Chairman, I would like to strongly commend the statement that you made just a few short minutes ago in which you outlined the resolve you have to create from the series of hearings you are holding, a system of world trade that is equitable and that is based on law to which disputes can be repaired.

I think the importance of the law in the resolution of trade disputes and in establishment of a world trade system is getting kicked around a little right now. There are those who would reduce the role of law in the settlement of international disputes. Those who would prefer a sort of network of gentleman's agreements and voluntary restraints and market allocations and cartels and monopolies.

Mr. Chairman, our great national industrial economy grew really from establishment of laws that ensured free and fair competition in this country. If we are going to have a similar growth in our world industrial economy it must be built on a similar faith in equity and force of law.

I think what disturbs me most is to come to these hearings and listen to representatives from both industry and labor at various times say the answer to our competitive problems is to reduce or emasculate our antitrust laws, to repeal the Corrupt Practices Act, and to dismantle all the carefully crafted structures of our trade laws so that relief from import competition can be achieved without too much effort and without much cost.

Obviously in the discussions you are having here today our great concern is with article 201 and we strongly oppose the changes in article 201 that have been proposed. We are concerned with the manner in which the government is circumventing the procedures and consequences of established procedures under article 201.

As you are also familiar, in 1980, Ford and the United Auto Workers appealed to the International Trade Commission for import relief under article 201 on the grounds that they were suffering serious injury from import competition. The American International Automobile Dealers Association was, I guess, you would call the principal defense witness in that case representing the industry and you have asked about costs and time. I can tell you that our defense in that particular case cost us about $200,000 of our members' money, most of which Dr. Fisher here wound up with, I think, but it also created a period of about 6 months time when our dealers found themselves unable to get the bank financing for expansion of their plants, their line of credits were limited because the banks say, if you lose that ITC case you might not be able to pay this back.

So there was severe hardship for many of our dealers involved in that time.

At that time, though, the ITC held that other factors than imports were far more critical to the problems of the domestic industry. They denied any import relief at that time.

The industry, however, rather than assuming they had lost at that time came to the Congress and asked the Congress, in effect, to override the ITC decision and wound up with the Danforth/Bentsen Quota Bill which seemed to have a very good chance of passage at the time, so much so that this association went to Japan and met with the Japanese manufacturers and told them, "You are going to have to agree to some voluntary restraints or Congress is going to enact a Danforth/Bentsen Bill and we will be in real trouble for years to come."

The administration leaned on them heavily and we finally wound up with the present voluntary restraint agreement which is no different from an orderly marketing agreement, which is supposedly an exclusive remedy under an article 201 case through the ITC.

The economic consequences of that particular VRA are still being felt. The consumer, according to studies we have had done, is now paying $4.5 billion a year more for automobiles than he would be paying without the existence of the VRA. Harbridge House, a distinguished research firm in Boston, did another study for us which said that the cost of the voluntary restraint agreement in terms of individual automobiles was $1,900 per imported car and there have been tagalong price increases in domestic automobiles as well.

The total came to $4.5 billion a year to the consumer.

There has been no increase in domestic employment and there has been no increase in domestic production since the voluntary restraint agreement went into effect. There has been, however, a sharp reduction in consumer choices since the manufacturers of the Japanese cars have switched to more profitable, more expensive models and are not bringing in as many of the lower cost items as they would be normally.

They are not bringing in the minicars and not bringing in several cars, such as the minivans that they are selling in Japan.

Consequently, 3 years after the ITC case, it remains abundantly clear that the ITC was absolutely correct. Obviously, factors other than imports are the chief problems with the domestic automobile industry because they have had 3 years of quotas and it has not helped them any.

So there must be other factors at work.

The restraints, really, have only enabled the industry to raise prices to a point where last year, despite the fact that they had their lowest sales volume in 21 years, both General Motors and Chrysler were able to show a profit, which would indicate an extremely high unit profit level, which they have been able to hold on these cars probably mostly due to the Japanese Restraint Agreement.

I think, in looking at these proposals to reduce the causation criteria in article 201, we have to look at the background of article 201 and how it came to be drafted in the first place.

Since both the gentlemen present here are intimately familiar with that background, I don't really need to repeat it for you but, in essence, article 201 was originally created to establish a relief, an escape clause for industries which are affected by sudden reductions in tariffs due to tariff negotiations that were going on at the time.

If those sudden reductions in tariff caused difficulties, they could appeal to the ITC for relief on a temporary basis.

It was only after all those rounds of tariff increases had been accomplished that article 201 was changed and eliminated that particular requirement that the injury had to be as a consequence of tariff reductions, and merely made it a significant injury meaning an injury no less great than any other.

This new proposal being made that mere injury would be sufficient criteria, we think that is a very dangerous precedent. There are other proposals, one made to this committee, I believe yesterday, that 201 cases should be judged on the same basis as 301 cases, or unfair trade cases. Article 201 is unique in that it deals only with fairly traded products. And to classify fairly traded competition on the same basis as such unfair cases as dumping or subsidy cases I think is contradictory of all the basic premises of our trade acts.

As a result of such changes, should they be made, any industry facing import competition would be able to seek and achieve quotas or tariffs on the import competition. This would mean we would certainly have a new automobile case immediately. I would expect the United Auto Workers and the manufacturers, if such a criteria were established, to have us back before the ITC before the year is out. We would lose such a case. We would lose because the criteria are changed.

Since 1978, which was the domestic automobile industry's record year, greatest sales year, and profit year was the greatest, our sales have increased in terms of imported automobiles by 200,000 units a year. In the same period of time, domestic automobile sales have declined by 3,200,000 sales a year.

By any criteria that we now use, you could hardly say that imports have been the chief cause of the problems of the domestic industry based on those statistics. If we stick with the present criteria, if we are called back before the ITC again, I think we would win again. We have taken 200,000 sales from the domestics in 5 years. That is approximately 1 week's sales in a normal year. At the same time they have lost 3 million sales to some other causes which we could enumerate.

We could win that case.

But if you only have to establish injury though, there you are, we have taken 200,000 sales from domestics. That is injury. We would lose. It would hardly be worth spending Dr. Fisher's fees to go in and fight it because it would be down the drain before we could get there.

In dealing with the ITC and with the present trade laws and from our experiences, these are probably the best indications I can offer, Mr. Chairman, that we need to continue world trade policy as a policy under law and as a policy in which there can be fair, competitive resources for those who have seriously been injured by imports. That is needed and I think it is the criteria we have to keep.

I would ask Dr. Fisher to go on with that subject.

STATEMENT OF BART S. FISHER, COUNSEL, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. **Fisher**. Thank you.

I was delighted to hear your earlier statement, Mr. Chairman, that when you consider the trade laws you intend to focus this year on dumping and countervailing duties as opposed to title II and the safeguard actions. The reason that brings us here today is the concern that was manifested 2 days ago when we testified before Representative Florio's subcommittee of the House Energy and Commerce Committee on the subject of the proposed domestic content legislation for automobiles.

To our astonishment Representative Florio, representatives of the automobile industry and the UAW indicated an interest in reforming section 201 to make it easier for the U.S. automobile industry to secure import limitations.

So the strategy that appeared to us to be emerging from the hearings was clear, first to make the Nation's trade laws more protectionist, then file a case under a refurbished section 201 concerning automobiles that could be relied on to secure import restraints.

It was that developing scenario that bothers us. Apart from the reality of the prohibitive 25 percent tariff now in place in light trucks, a voluntary restraint agreement with Japan that is neither voluntary nor an agreement, and discriminatory tariff on automobiles that permits U.S. companies to import their products from Canada duty free, we apparently now will confront pressures to gut section 201 of the Trade Act of 1974 and shield U.S. industry from the cold winds of foreign competition.

As Mr. McElwaine just indicated, we say to you this, do not gut section 201, and insulate American industry from the world marketplace.

Instead let us continue our efforts to secure an international agreement on a safeguards code that could be based on our already acceptable version of such a code, 201 of the Trade Act of 1974.

I think you have heard from Mr. McElwaine what we would not like to see, we would not like to see the causation standard lowered. We would not like to see Presidential discretion removed.

I would like to talk for a few minutes about affirmative changes we would like to see, three in number. One, we believe adjustment assistance should be the preferred remedy mandated by the statute if a petitioner qualifies for relief under the criteria of section 201 rather than import restraints.

The quid pro quo for adjustment assistance should be a well-developed plan for industrial recovery subject to annual review.

Funding for the program would not be a problem if the Federal Government earmarked revenue from the tariffs for generous assistance to workers and corporations but only if the entities receiving assistance agree to retrain and adjust to foreign as well as domestic competition. Such a scheme would permit the U.S. trading system to be, in effect, a self-insurer.

Resources raised by the mechanisms of protection, tariffs, which themselves have occasioned much of the lack of competitiveness of

U.S. industries, should be the financial support of a massive effort to adjust to foreign competition.

The second suggestion we would make is that the remedies provided for in section 203(a) be exclusive. As you know, and Mr. McElwaine just indicated, following an affirmative ITC recommendation the President may implement a tariff, a quota, tariff quota or orderly marketing agreement known as an OMA.

Now, we have to ask ourselves who are we fooling if at the end of the day, the ITC issues a negative determination and the domestic petitioner then goes on an end run around the statute and ends up with a voluntary restraint agreement which, as we indicated before, is neither voluntary nor an agreement.

In other words, you lean on your trading partner to put in a quota that you were unsuccessful in obtaining. The legal dimension of this is that the Congress has the plenary authority over foreign commerce under Article I, Section 8 of the Constitution until and unless it delegates that away. It has never done that. We contend the statute should be amended to make it clear that those five remedies are exclusive remedies and the VRAs should not be acceptable following a negative ITC decision.

Finally we believe 201 should be brought in conformity with the GATT to require consultation by the parties be taken before the implementation of such restraints with a view towards providing compensation for such restraints. At present under section 203(k) the President is obliged only to give consideration to the international obligations of the United States. Under 103 of the Trade Act he may give compensation.

This is relevant to the motorcycle case where the Japanese would be justified in demanding compensation and it is not offered by the administration.

In a broader sense we feel that the United States should not be discouraged by the results of the November 1982 GATT ministerial which did not work out in terms of movement towards an international safeguard regime. We believe that the Congress should encourage the administration to go ahead and continue negotiations on an International Safeguards Code with our trading partners but in the interim, please, section 201 should not be refashioned to a more import-limiting statute.

That is about all we have to say.

We would be delighted to answer questions you may have.

[The prepared statement follows:]

STATEMENT OF BART S. FISHER, COUNSEL TO THE AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman, the American International Automobile Dealers Association (AIADA) appreciates the opportunity to state its views on reform of the nation's trade laws before the Ways and Means Committee.

The importers of automobiles have ample reason to be converned about what reforms are made in our trade laws, as we are dependent on our ability to secure imported products.

We will state our philosophy clearly and offer it to the Committee as an operating proposition. We draw a fundamental distinction between unfairly-traded and fairly-traded goods. Unfairly-traded goods are products which do not compete on their merits in the U.S. marketplace; rather, they rely on market-distorting assets such as governmental subsidies, dumping, or commercial piracy to penetrate the U.S. marketplace. We do not condone unfairly traded goods; we do not earn one market share through dumping, subsidies, or other unfair trading practices. Consequently, we support the vigorous enforcement of the countervailing duty and antidumping statutes of the United States.

On the other hand, when the product involved is a farily-traded one, such as is now the case with imported automobiles, we believe that the proper normative bias is towards the free movement of goods in international commerce. As you know, we were a party in the automobile Section 201, or "escape clause", case in 1980, and may be a party again in the future. We care what Section 201 says, and why.

Mr. Chairman, this question is of contemporary relevance. Just two days ago we testified before Representative Florio's subcommittee of the House Energy and Commerce Committee on the subject of proposed domestic content legislation for automobiles. To our astonishment, Representative Florio, representatives of the automobile industry, and the UAW indicated an interest in "reforming" Section 201 to make it easier for the U.S. automobile industry to secure import limitations.

The strategy that appeared to be emerging from those hearings was clear: first make the nation's trade laws more protectionist, and then file a case concerning automobiles under a refurbinshed version of the statute that could be relied upon to secure import restraints.

Apart, then, from the reality of a prohibitive 25 percent duty on light trucks, a "Voluntary Restraint Agreement" with Japan that is neither voluntary nor an agreement (costing the U.S. consumer an additional $1,900 per automobile), and a discriminatory tariff on automobiles that permits U.S. companies to import their products from Canada duty-free, we apparently now will confront protectionist pressures to gut Section 201 of the Trade Act of 1974, and shield U.S. industry from the cold winds of foreign competition.

We say this: do not gut Section 201, and insulate American industry from the world marketplace. Instead, let us continue our efforts to secure an international safeguard system that is based on our already acceptable version of the escape clause, Section 201 of the Trade Act of 1974.

Before looking at the details of Section 201, it might be instructive to describe the criteria which should guide any reform of any trade law. The nation's foreign trade laws are designed to secure distinct juridical, political, and economic objectives. From a juridical point of view, Section 201 protects the U.S. producer who is being injured as a result of disruptive foreign imports. In this context the "right" that is being protected approaches a property right. On the other hand, Section 201 must also protect the right of a U.S. importer from arbitrary and capricious governmental action, as he is injured by the inability to continue importing: This is also a property right which must be recognized and protected.

From a political view it is important that Section 201 be effective as a safety valve in the formulation of trade policy in a democratic society by releasing pressures which might otherwise result in more extreme solutions from Congress. In this context, the complicated three-tiered structure of Section 201, which involves Congressional participation in the Section 201 process, is an extremely important component of the overall scheme.

Finally, from an economic point of view, Section 201 should be enforced in a way which maximizes the production possibilities curve of the United States, and permits the United States to make the most of the goods and services at its disposal. One does not tamper lightly with the Law of Comparative Advantage. It is a fact that we will earn more, as a country, through participation in an open world economy, than be retarding adjustment. Accordingly, the entire system should be structured to foster adjustment to foreign competition.

Reducing these generalizations to specifics requires first that we look at Section 201 of the Trade Act of 1974 as it is; we can then look at it as we would like it to be. Section 201 can be described in terms of three concepts and three levels of governmental participation.

The ITC must in the first instance make a determination whether an article is being imported into the United States in such increased quantities as to be substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

The three key concepts are increased imports, serious injury, and "substantial cause", which is defined as a cause which is (a) important and (b) not less than any other cause.

Two proposals have been made that would in effect make Section 201 take the place of the near defunct program for Trade Adjustment Assistance ("TAA"), to compensate employees, firms, and communities which are injured by competition from high volume imports. The first would dilute the standard of causation from "substantial cause" of injury to "important cause" or even simply a "cause". The second would restrict the President's discretion to act contrary to the recommendations of the International Trade Commission and would increase Congress' oversight of the President's decisions under Section 201. These reforms are fundamentally at odds with the economic and political functions of Section 201.

Economically, Section 201 assures that relief is available to domestic industries when increased imports are a substantial cause of serious injury or the threat thereof to that industry. In making this finding, the International Trade Commission must consider a variety of economic factors, including trends in the industry's capacity utilization, employment, profits and sales. The relief granted may take the form of tariff increases, quotas, orderly marketing arrangements and other defensive measures. In contrast to the new proposals, relief under Section 201 has been distinct from the compensatory relief under the program of trade adjustment assistance ("TAA") which provided funds for wage maintenance of unemployed workers, retraining, and government-guaranteed loans for retooling and modernization.

Section 201 is distinct from virtually every other import relief law, including the anti-dumping statues, Section 301, and Section 337, in that the Section 201 remedy is not granted in response to unfairly-or illegally-traded imports. The "cause of action" under Section 201 simply does not involve any allegation that some foreign country or firm has acted unlawfully or in bad faith. Rather, it responds to the simple fact that imports of a particular article or commodity have increased, and, as a direct result, a domestic industry has been injured.

Under the "substantial cause" standard, relief can be granted only if imports are no less important than any other single cause of injury. AIADA believes that this safeguard is entirely appropriate when the underlying problem is high volume, low-priced imports which are fairly-traded. So long as there is no indication whatsoever that the imports are subsidized or dumped, or are the result of some other unfair practice, standard economic theory has it that the consumer and the domestic economy generally will benefit from the competition.

If it were made any easier to restrain fairly-traded imports in high volume, there would be nothing to stop foreign retaliation against fairly-traded, high volume exports from the United States as well. Article XIX of the General Agreement on Tariffs and Trade provides that, in escape clause actions resulting in tariff increases or other import relief, the foreign state whose exports are affected is entitled to compensation in the form of higher tariffs at its own borders or reduced tariffs on other goods entering the state which invokes the escape clause. Thus, the United States, as a result of granting relief to one industry under Section 201 could be required to compensate by either reducing other U.S. tariffs, thereby threatening jobs elsewhere in the economy, or facing higher tariffs abroad, with the same result. Why should the U.S. high technology or aircraft industries be forced to pay a price in the form of high customs barriers abroad for the sake of other U.S. industries in decline for reasons that are more substantial than imports?

Given the global marketplace, and our increasing dependence on foreign purchases of U.S. goods, the proper answer to injurious imports is adjustment assistance, not hair-trigger quotas, higher tariffs, or any other escalating war of protectionist barriers.

The reasons for the preference are clear. Unlike import restrictions, TAA does not impose an inflationary tax on consumers. In addition, consumers continue to enjoy a wider selection of products and remain the ultimate beneficiaries of future costs savings in foreign or domestic production. TAS is also a more efficient form of relief, since it can be precisely targeted to assist those firms and workers in need of that assistance and not give windfall protection to efficient firms. Import restrictions blanket the industry, without regard to whether particular firms within that industry actually deserve it or not. Finally, TAA is financed through the existing tax system, and the cost is equitably borne throughout the existing tax system and the broader society. By contrast, import restrictions are intrinsically regressive and therefore inequitable.

Given the advantages of trade adjustment assistance, it is not surprising that the Senate Finance Committee originally encouraged the International Trade Commission to favor such assistance.[1]

In response to the perceived failure of TAA, the Reagan Administration has gutted the program, reducing the amounts spent on adjustment assistance from $1.6 billion in 1980, and $1.4 billion in 1981 to $102 million in 1982. In emphasizing such remedies rather than reasonably modifying and endorsing the TAA program, Congress would be moving in precisely the wrong direction.

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[1] Sen. Rep. No. 1298, 93d Cong., 2d Sess. at 123 (1974).

The economic effects of import "remedies" are all too easy to predict. In 1980, the United States induced the Japanese to restrict their exports of cars to the United States to 1.68 million units. This so-called "voluntary" restraint was indistinguishable in economic terms from the kind of quotas available under Section 201. It is now established that the restraints raised consumer costs by some $4.5 billion annually, without adding a single job in U.S. automobile factories. Harbridge House, Inc., a highly respected economic consulting firm, determined in 1982 that the restraints raised prices on Japanese imports by $1900 per car, allowed domestic manufacturers to raise their prices accordingly (rather than to increase their market shares), and significantly reduced the overall choice among model types available to U.S. consumers.

These costs might have been justified if the Voluntary Restraint Agreement ("VRA") had had any demonstrable employment effect in the domestic automobile industry. Three years later, however, it remains clear, even as the ITC concluded in 1980, that Detroit's problems have been more fundamental than imports, and in any event seem recently to have eased with the overall recovery in our economy.

As this example suggest, import relief in the form of tariff increases or import quotas are inherently inflationary. In the past, when such relief has been proclaimed, domestic manufacturers have consistently raised their prices behind the protective barrier of "relief." The result has typically been higher profits for the "losers" in our domestic industry rather than true adjustment to import competition in terms of product price, quality, or selection. It is important to remember that import restrictions are thus a direct transfer of income from consumers to domestic industries. We must ask ourselves the trenchant question: do we allow the economy to be led by "losers", rather successful enterprises?

Given the known costs and the speculative benefits of import relief, the causation standard in Section 201 should not be weakened. Import relief from fairly-traded imports should not be easy to get. The attempt to dilute the causation requirement in Section 201 would invite industries to petition the government for special consideration, when their own inefficiencies or profligacies have kept them from meeting honest competition.

It is argued that such a revision is necessary to bring Section 201 into conformity with Article XIX of the General Agreement on Tariffs and Trade ("GATT"), which does not explicitly require that the cause of injury be "substantial" as a prerequisite for escape clause relief. The reformers suggest that the proper, literal interpretation of Article XIX is all that the United States is obliged to apply in such proceedings.

But the reformers, who are such literalists on the issue of causation, pointedly ignore the rest of Article XIX. Specifically, they pretend to be unaware that Article XIX by its terms only applies if the injury sustained is an unforeseen result of tariff concessions. Historically, Article XIX was necessary to contain the risks associated with mass reductions in tariffs during the early years of GATT: the "escape clause" allowed a state which had cut tariffs to reimpose them if, as a result of those concessions, imports increased and caused injury.

The precursor of Section 201 was accordingly limited to relief made necessary by prior tariff concessions. The "substantial cause" language did not appear until the scope of Section 201 was expanded beyond the textual confines of Article XIX to include injurious imports which were not solely the result of U.S. tariff reductions. In authorizing relief from injurious imports which increased for any reason, Congress apparently believed that some sort of reasonable limitation was necessary in order to preserve the economic benefits of international competition and to avoid the petitions of structurally unprofitable, or lazy, domestic firms. The "substantial cause" test was that reasonable limitation. Anything less than that might itself have violated the GATT, especially Article XI, which prohibits the imposition of quotas and quantitative restrictions on imports. In short, the argument that the causation standard must be conformed to Article XIX is incoherent, unless Section 201 is also amended to apply only when imports increase after tariff cuts, a change almost everyone would oppose.

The other major proposal is no better. It is our understanding that the Congress will be asked to consider limiting the President's role in Section 201 proceedings and increasing the oversight role of Congress. Currently of course, the President has the option of adopting the ITC's recommendations, imposing other relief or rejecting the recommendations entirely. Congress may, by concurrent resolution, override the President and order the implementation of the ITC's recommendation.

The suggestion that the President has some unguided discretion under Section 201 is fundamentally misleading; the President is required to take nine specific and rational factors into account in determining appropriate relief. These include advice from the Secretaries of Labor and Commerce, the effect of relief on the industry concerned, the consumer and U.S. economic interests internationally, the geographic concentration of imported products marketed in the United States, the extent to which the imports are directed to the United States because of import barriers in third country markets, and the economic and social costs which would be incurred in the absence of import relief.

AIADA submits that, with these procedural and substantive restraints on the action of the President, Section 201 as it currently operates strikes the proper balance between principle and politics. The President is constitutionally authorized to act in matters of U.S. foreign affairs, which are plainly involved in virtually every trade proceeding.

It is proper in a democracy for the national representative of the people to act in their overall interest. At the same time, it is important to allow the President to act with some flexibility and speed in those cases where immediate import relief is essential. Congressional oversight assures that the overall purposes of Section 201 are served, but there is no suggestion that Congress has the inclination or the capacity to supplant the President in the making and execution of trade policy. To the extent that such decisions involve foreign affairs the President's primary discretion, subject to Congressional oversight, is a proper allocation of authority within the Constitutional separation of powers.

For these reasons, the AIADA actively opposes any amendment to reduce the President's role in Section 201 proceedings; at the same time, it endorses the current oversight role of Congress.

Mr. Chairman, you now know what changes AIADA believes should not be made. At this point we would like to make three constructive suggestions regarding changes which should be made in the statute.

First, adjustment assistance should be the preferred remedy mandated by statute if a petitioner qualifies for relief under the criteria of Section 201, rather than import restraints. The quid pro quo for adjustment assistance should be a well-developed plan for industrial recovery, subject to annual review. Funding for such a major adjustment assistance program would not be a problem if the Federal Government were to earmark revenue from the tariffs for generous assistance to workers and corporations—but only if the entities receiving assistance agreed to retrain and adjust to foreign, as well as domestic, competition. Such a scheme would permit the U.S. trading system to be, in effect, a self-insurer. Resources raised by the mechanisms of protection, which themselves have occasioned much of the lack of competitiveness of U.S. industries, should be the financial support of a massive effort to adjust to foreign competition.

The second suggestion we would make is that the remedies provided for in Section 203(a) be exclusive. As you know, following an affirmative ITC recommendation, the President may implement a tariff, a quota, a tariff-quota, or an Orderly Marketing Agreement, known in the vernacular as an OMA.

The Congress, under Art. I, Sec. 8 of the Constitution, has the plenary authority over foreign commerce unless and until it delegates that authority in a permissible manner. We contend that the Congress should not permit the President to "negotiate" a so-called Voluntary Restraint Agreement (VRA) following a negative ITC determination. To permit such a situation is to ignore substance in favor of form. One example should suffice to demonstrate our point.

In 1980, some automobile unions and domestic manufacturers sought relief under Section 201 from Japanese car imports. As noted above, the ITC denied the relief on the ground that imports were not a "substantial cause of serious injury" or the threat thereof to the domestic industry. The President accordingly imposed no relief. The domestic industry, however, subsequenlty petitioned Congress for a bailout, despite the considered judgment of the ITC and the President. While Congress considered the possibility of imposing an import quota, the Japanese were pressured by the USTR into adopting the Voluntary Restraint Agreement. AIADA believes that the executive branch's efforts to attain the VRA were entirely beyond its delegated authority, because they were in excess of the exclusive remedies made available by Congress in the import relief statutes.

Congress made the exercise of executive authority over import restraints dependent on the public ventilation of the issues and has prescribed a procedure with safeguards for the affected interests. Following the ITC determination that quotas, orderly marketing arrangements and the like were not appropriate, the executive branch in effect completely circumvented the process for political reasons by substituting the VRA for relief to which the domestic petitioners had been proved to have no right.

The VRA constitutes an end-run around the legally ordained procedures for obtaining import relief, and should be prescribed as a form of relief for a domestic industry which has been usable to secure an affirmative ITC determination.

Finally, AIADA believes that Section 201 should be brought into conformity with the GATT to require that consultations with parties affected by import restraints be taken before the implementation of such restraints, with a view towards providing compensation for such restraints. At present, under Section 203(k), the President is obliged only to give "consideration" to the international obligations of the United States, and, under Section 103 of the Trade Act of 1974, "may" give compensation.

Mandatory compensation would be an effective discipline on the Presidential use of import restraints, and should be implemented, if the decision is made to alter Section 201 to bring it into conformity with the GATT.

In a broader sense, the United States should not be discouraged by the results of the failure of the November, 1982, GATT Ministerial meeting to achieve all of its objectives, one of which was movenment towards an international safeground regime. Congress should encourage the Administration to continue negotiations on an international safeguards code with our trading partners. In the interim, Section 201 should not be refashioned into an even more import-limiting statute.

Thank you very much for your consideration. Our panel would be glad to answer any questions you might have.

STATEMENT OF TOM NEMET, CHAIRMAN, ROBERT M. MCELWAINE, PRESIDENT, BART S. FISHER, COUNSEL, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

SUMMARY

1. The American International Automobile Dealers Association (AIADA) believes that Section 201 of the Trade Act of 1974, also known as the "safeguard" or "escape clause" trade statute, has on the whole, worked well to balance the interests of the parties involved in trade policy making in our pluralistic society. Accordingly, AIADA opposes "reforms" of Section 201 that would lower the standard of causation or restrict the discretion of the President in following an affirmative ITC decision extending import relief.

2. AIDADA supports four changes in Section 201 that would improve the operation of the statute:

(a) Adjustment assistance should be the preferred remedy mandated by the statute if a petitioner qualifies for relief;

(b) No U.S. industry should be permitted to benefit from import restraints in the absence of a well-developed plan for industrial recovery, subject to annual review;

(c) It should be provided that the remedies in Section 201 are exclusive; and

(d) the statute should clarify the GATT obligation of the U.S. Government to provide a "compensation" in the event a decision is made by the President to impose import restraints.

STATEMENT

The American International Automobile Dealers Association ("AIADA") welcomes the opportunity to testify in support of a cause on which all Americans agree: the modernization and productivity of American industry. But AIADA is concerned that this reasonable cause is deteriorating into a movement which endangers our continued economic recovery and which threatens to subvert international trade. In particular, AIADA is concerned that Section 201 of the Trade Act of 1974, the so-called "escape clause," will be transformed from a serviceable statute carefully constructed to protect the consumer from exploitation as well as to protect domestic manufacturers from foreign competition into an expedient statute with a distinctly protectionist bias.

Two proposals have been made that would in effect make Section 201 take the place of the near defunct program for Trade Adjustment Assistance ("TAA"), to compensate employees, firms, and communities which are injured by competition from high volume imports. The first would dilute the standard of causation from "substantial cause" of injury to "important cause" or even simply a "cause". The second would restrict the President's discretion to act contrary to the recommendations of the International Trade Commission and would increase Congress' oversight of the President's decisions under Section 201. These reforms are fundamentally at odds with the economic and political functions of Section 201. In addition, they ignore what we perceive to be the major problems in with Section 201, as currently conceived and implemented. These problems are that (i) the exclusive remedies available under Section 201 et seq. have been disregarded in the past to the detriment of the American consumer and the domestic economy, (ii) trade adjustment assistance should be the preferred solution to injurious but fairly-traded imports, and (iii) genuine procedural improvements are needed.

Section 201 serves essentially economic and political functions.

Economically, Section 201 assures that relief is available to domestic industries when increased imports are a substantial cause of serious injury or the threat thereof to that industry. In making this finding, the International Trade Commission must consider a variety of economic factors, including trends in the industry's capacity utilization, employment, profits and sales. The relief granted may take the form of tariff increases, quotas, orderly marketing arrangements and other defensive measures. In contrast to the new proposals, relief under Section 201 has been distinct from the compensatory relief under the program of trade adjustment assistance ("TAA") which provided funds for wage maintenance of unemployed workers, retraining, and government guaranteed loans for retooling and modernization.

Section 201 is distinct from virtually every other import relief law, including the anti-dumping statutes, Section 301, and Section 337, in that the Section 201 remedy is not granted in response to unfairly-or illegally-traded imports. The "cause of action" under Section 201 simply does not involve any allegation that some foreign country or firm has acted unlawfully or in bad faith. Rather, it responds to the simple fact that imports of a particular article or commodity have increased, and, as a direct result, a domestic industry has been injured.

Under the "substantial cause" standard, relief can be granted only if imports are no less important than any other single cause of injury. AIADA believes that this safeguard is entirely appropriate when the underlying problem is high volume, low-priced imports which are fairly-traded. So long as there is no indication whatsoever that the imports are subsidized or dumped, or are the result of some other unfair practice, standard economic theory has it that the consumer and the domestic economy generally will benefit from the competition.

If it were made any easier to restrain fairly-traded imports in high volume, there would be nothing to stop foreign retaliation against fairly-traded, high volume exports from the United States as well. Article XIX of the General Agreement on Tariffs and Trade provides that, in escape clause actions resulting in tariff increases or other import relief, the foreign state whose exports are affected is entitled to compensation in the form of higher tariffs at its own borders or reduced tariffs on other goods entering the state which invokes the escape clause.[1] Thus, the United States, as a result of granting relief to one industry under Section 201 could be required to compensate by either reducing other U.S. tariffs, thereby threatening jobs elsewhere in the economy, or facing higher tariffs abroad, with the same result. Why should the U.S. high technology or aircraft industries be forced to pay a price in the form of high customs barriers abroad for the sake of other U.S. industries in decline for reasons that are more substantial than imports?

Given the global marketplace, and our increasing dependence on foreign purchases of U.S. goods, the proper answer to injurious imports is adjustment assistance, not hair-trigger quotas, higher tariffs, or any other escalating war of protectionist barriers.

The reasons for the preference are clear. Unlike import restrictions, TAA does not impose an inflationary tax on consumers. In addition, consumers continue to enjoy a wider selection of products and remain the ultimate beneficiaries of future costs savings in foreign or domestic production. TAA is also a more efficient form of relief, since it can be precisely targeted to assist those firms and workers in need of that assistance and not give windfall protection to efficient firms. Import restrictions blanket the industry, without regard to whether particular firms within that industry actually deserve it or not. Finally, TAA is financed through the existing tax system, and the cost is equitably borne throughout the existing tax system and the broader society. By contrast, import restrictions are intrinsically regressive and therefore inequitable.

Given the advantages of trade adjustment assistance, it is not surprising that the Senate Finance Committee originally encouraged the International Trade Commission to favor such assistance.[2]

In response to the widely perceived failure of TAA, Congress has made it progressively difficult to get that assistance and now is considering the advisability of making import restrictions under Section 201 do what adjustment assistance did not. In emphasizing such remedies rather than reasonably modifying and endorsing the TAA program, Congress is moving in precisely the wrong direction.

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[1] Section 201 should be brought into conformity with GATT Article XIX by making it clear that the United States will compensate foreign states which are injured by relief proclaimed under Section 201.

[2] Sen. Rep. No. 1298, 93d Cong., 2d Sess. at 123 (1974).

The economic effects of import "remedies" are all too easy to predict. In 1980, the United States induced the Japanese to restrict their exports of cars to the United States to 1.68 million units. This so-called "voluntary" restraint was indistinguishable in economic terms from the kind of quotas available under Section 201. It is now established that the restraints raised consumer costs by some $4.5 billion annually, without adding a single job in U.S. automobile factories. Harbridge House, Inc., a highly respected economic consulting firm, determined in 1982 that the restraints raised prices on Japanese imports by $1900 per car, allowed domestic manufacturers to raise their prices accordingly (rather than to increase their market shares), and significantly reduced the overall choice among model types available to U.S. consumers.

These costs might have been justified if the Voluntary Restraint Agreement ("VRA") had had any demonstrable employment effect in the domestic automobile industry. Three years later, however, it remains clear, even as the ITC concluded in 1980, that Detroit's problems have been more fundamental than imports, and in any event seem recently to have eased with the overall recovery in our economy.

As this example suggests, import relief in the form of tariff increases or import quotas are inherently inflationary. In the past, when such relief has been proclaimed, domestic manufacturers have consistently raised their prices behind the protective barrier of "relief." The result has typically been higher profits for the domestic industry rather than true adjustment to import competition in terms of product price, quality, or selection. It is important to remember that import restrictions are thus a direct transfer of income from consumers to domestic industries.

In addition, there are structural reasons that import relief under Section 201 generally cannot create U.S. jobs. Despite the popular rhetoric to the contrary, it is nearly impossible to "get" employment by blocking fairly-traded imports. First, in a floating exchange rate system, any trade restriction which has the effect of reducing expenditures on imports will also have the effect of appreciating the currency above what it would otherwise be. This erodes the competitive position of U.S. export industries, whose products are suddenly priced higher in foreign markets. Depending on the trade value of the restriction, the number of jobs preserved in the protected industry could well be offset by jobs lost elsewhere.

This offset would be compounded by the prospect of legal retaliation against the protection. As noted, members of the GATT are entitled to compensation when import relief is granted in the form of increased traiffs or quotas. Irrespective of whether the compensation takes the form of increased tariffs abroad or decreased tariffs in the United States, jobs in other industries would be threatened. Again, the extent to which Section 201 relief creates jobs in the protected industry depends upon the value of the affected imports, but it is ludicrous to ignore the fact that such relief would reduce employment elsewhere in the domestic economy.

Given the known costs and the speculative benefits of import relief, the causation standard in Section 201 should not be weakened. Import relief from fairly traded imports should not be easy to get. The attempt to dilute the causation requirement in Section 201 would invite industries to petition the government for special consideration, when their own inefficiencies or profligacies have kept them from meeting honest competition.

It is argued that such a revision is necessary to bring Section 201 into conformity with Article XIX of the General Agreement on Tariffs and Trade ("GATT"), which does not explicitly require that the cause of injury be "substantial" as a prerequisite for escape clause relief. The reformers suggest that the proper, literal interpretation of Article XIX is all that the United States is obliged to apply in such proceedings.

But the reformers, who are such literalists on the issue of causation, pointedly ignore the rest of Article XIX. Specifically, they pretend to be unaware that Article XIX by its terms only applies if the injury sustained is an unforeseen result of tariff concessions. Historically, Article XIX was necessary to contain the risks associated with mass reductions in tariffs during the early years of GATT: the "escape clause" allowed a state which had cut tariffs to reimpose them if, as a result of those concessions, imports increased and caused injury.

The precursor of Section 201 was accordingly limited to relief made necessary by prior tariff concessions. The "substantial cause" language did not appear until the scope of Section 201 was expanded beyond the textural confines of Article XIX to include injurious imports which were not solely the result of U.S. tariff reductions. In authorizing relief from injurious imports which increased for any reason, Congress apparently believed that some sort of reasonable limitation was necessary in order to preserve the economic benefits of international competition and to avoid the petitions of structurally unprofitable, or lazy, domestic firms. The "substantial cause" test was that reasonable limitation. Anything less than that might itself have violated the GATT, especially Article XI, which prohibits the imposition of quotas and quantitative restrictions on imports. In short, the argument that the causation standard must be conformed to Article XIX is incoherent, unless Section 201 is also amended to apply only when imports increase after tariff cuts, a change almost everyone would oppose.

The other major proposal is no better. It is our understanding that the Congress will be asked to consider limiting the President's role in Section 201 proceedings and increasing the oversight role of Congress. Currently of course, the President has the option of adopting the ITC's recommendations, imposing other relief or rejecting the recommendations entirely. Congress may, by concurrent resolution, override the President and order the implementation of the ITC's recommendation.

The suggestion that the President has some unguided discretation under Section 201 is fundamentally misleading; the President is required to take nine specific and rational factors into account in determining appropriate relief. These include advice from the Secretaries of Labor and Commerce, the effect of relief on the industry concerned, the consumer and the U.S. economic interests internationally, the geographic concentration of imported products marketed in the United States, the extent to which the imports are directed to the United States because of import barriers in third country markets, and the economic and social costs which would be incurred in the absence of import relief.

AIADA submits that, with these procedural and substantive restraints on the action of the President, Section 201 as it currently operates strikes the proper balance between principle and politics. The President is constitutionally authorized to act in matters of U.S. foreign affairs, which are plainly involved in virtually every trade proceeding.

It is proper in a democracy for the national representative of the people to act in their overall interest. At the same time, it is important to allow the President to act with some flexibility and speed in those cases where immediate import relief is essential. Congressional oversight assures that the overall purposes of Section 201 are served, but there is no suggestion that Congress has the inclination or the capacity to supplant the President in the making and execution of trade policy. To the extent that such decisions involve foreign affairs the President's primary discretion, subject to Congressional oversight, is a proper allocation of authority within the Constitutional separation of powers.

For these reasons, the AIADA actively opposes any amendment to reduce the President's role in Section 201 proceedings; at the same time, it endorses the current oversight role of Congress.

The AIADA is concerned that the exclusive remedies available under section 201 have been disregarded in the past to the detriment of the American consumer. The Trade Act of 1974 specifies five kinds of relief which may be proclaimed in section 201 proceedings, including tariff increases, tariff rate quotas, other quantitative restrictions, orderly marketing agreements, and any combination of these actions.

In 1980, some automobile unions and domestic manufacturers sought relief under section 201 from Japanese car imports. As noted above, the ITC denied the relief on the ground that imports were not a "substantial cause of serious injury" or the threat thereof to the domestic industry. The President accordingly imposed no relief. The domestic industry, however, subsequently petitioned Congress for a bailout, despite the considered judgment of the ITC and the President. While Congress considered the possibility of imposing an import quota, the Japanese were pressured by the USTR into adopting the Voluntary Restraint Agreement. AIADA believes that the executive branch's efforts to attain the VRA were entirely beyond its delegated authority, because they were in excess of the exclusive remedies made available by Congress in the import relief statutes.

Congress made the exercise of executive authority over import restraints dependent on the public ventilation of the issues and has prescribed a procedure with safeguards for the affected interests. Following the ITC determination that quotas, orderly marketing arrangements and the like were not appropriate, the executive branch in effect completely circumvented the process for political reasons by substituting the VRA for relief to which the domestic petitioners had been proved to have no right. As we have shown, the economic effects of the VRA were bad for the consumers and negligible for the domestic industry. In addition, there is something completely incongruous in an administration demanding a marketing arrangement which on its face is in apparent violation of American antitrust laws. In short, we agree that the President may have exercised too much discretion in past section 201 cases, but we believe that the solution lies in enforcing the statute as written, not in divesting the President of his authority.

There is one final suggestion which AIADA would propose to improve the administration of section 201. As a prerequisite for such relief, the domestic industry should be required to submit a clear and convincing plan outlining in detail its specific proposals to adjust to imports even without government assistance. Currently, such plans are considered only in the course of reviewing import relief in effect in order to determine whether it should be continued or not. To assure that import restrictions will be used for the proper purposes and not merely to increase domestic profits, such a plan should be submitted prior to the proclamation of relief and monitored annually throughout the period that such relief is in effect.

In conclusion, the AIADA remains committed to the concept of trade adjustment assistance as the economically preferable answer to significantly increased imports which directly lead to serious injury to the domestic industry. The proposed reform to section 201 is an ill-advised ruse to disguise protectionism as a movement to conform our trade remedy laws with the GATT. We urge the Congress to reject this attempt and hold to the principle that fairly-traded imports should not to be restricted unless they are the substantial cause of serious injury to a domestic industry. We will be pleased to submit specific statutory language effectuating our proposals as this Committee's deliberations continue.

Chairman GIBBONS. Those of you who followed this debate for a long time know I had a hard time with section 201 when we developed it. In the early 1970's and mid-1970's we developed that. I am reminded by your testimony that we don't need to go into that thicket again. It is a place that deserves consideration but in a better environment than that in which we find ourselves today.

I am concerned that we look at what we should consider to be legitimate complaints of American industry and labor that certain unfair practices are perpetuated upon them, and I assume that it is the position of your association that you are not opposed to changing those that are what we consider to be under the GATT unfair practices. Is that correct?

Mr. FISHER. Let me address that first.

First of all, our philosophy is clear and we operate to the committee as an operating proposition, we draw fundamental distinction between unfairly traded and fairly traded goods. Unfairly traded goods are products which don't compete on their merits in the U.S. marketplace. They rely on market distorting assets, such as subsidies, dumping or commercial piracy, to enter and penetrate the U.S. marketplace.

We don't condone unfairly traded goods. We don't earn our market share through dumping, subsidy, or other unfair practices. In consequence we fully support your effort to assure the vigorous enforcement of the countervailing and dumping laws of the United States.

Mr. MCELWAINE. I would just say amen to that.

Chairman GIBBONS. That is fine. I appreciate that very strong statement.

By the way, when I was in Japan the week before last I noticed new trucks on the streets that would sell like hotcakes around here if they imported them or if they could jump the 25 percent tariff.

Mr. FISHER. The tariff, yes, is critical.

Chairman GIBBONS. They were small, and very compact and seemed to be very efficient. I regret they are not being traded in this market because I think a lot of small business people would just fall all over themselves trying to get those vehicles. They were compact and very small and seemed to be able to maneuver efficiently.

While they perhaps wouldn't be able to tangle very well with an 80,000-pound truck, they can do a lot of the running around that business people have to do to get themselves and their products to and from the market.

I realize that we are penalizing our consumers by pursuit of the voluntary restraint. That is just an aside. I picked that up on one of my walking tours of Nagasaki when I got to some of the streets I had not had a chance to see.

Mr. Frenzel.

Mr. **Frenzel**. Thank you very much, Mr. Chairman.

Gentlemen, we are grateful for your testimony. We hope that it will serve as a good guide for the subcommittee as we move forward on whatever tack we choose to move. I want to echo the chairman's statement about getting into 201. This is not a propitious time for those who have some commitment to an open trading system to be wandering into that area.

Of course whoever goes in there is going to come out with less than they went in with. So I hope you are not discouraged if we don't accept some of your good advice with respect to that section immediately.

Second, I would say that the suggestion of consultation in 201 is not a terribly attractive one mainly because consultation doesn't do any good any more. If we are to take the example of 301 consultations we shall have to create a new Department of Consultation because we will consult endlessly to no good result.

First, I think before we can talk about consultation we have to put the GATT back together again through a cooperating and honestly consultative body where we will get cooperation. Until the EC recovers and stops stonewalling improvements, that is not a responsible or pragmatic possibility.

Finally, I think you know, Mr. Gibbons and I have been largely supportive of ways in which you would like the United States to conduct its trade with its neighbors, but let us say there are probably some things that you could do to help us. One of the most important arrows in the protectionist quiver has been to accuse all countries, but mainly the Japanese, of constructing an unfair playing field and closing their markets and taking advantage of us.

I don't think there is any sane person who has been around that would accuse Japan of being an open market even though its Trade Minister did at the last GATT meeting.

You have contacts with your principal suppliers in Japan and my guess is they are among the few, at least among a select group of Japanese businessmen who are agitating to open the markets because their business depends on markets abroad.

Now, I think a little encouragement in that regard from you would be of continuing benefit to us. When we were in Japan the chairman had a fairly active confrontation with a number of levels of officialdom including the PM about standards, particularly self-certification of American cars. Now, we know that American car makers are not very anxious to sell cars in Japan, at least they don't make cars for that market. They look like they are going to sell about 6,000 cars over there this year which is not a significant effort.

On the other hand, the Japanese make themselves look bad by continuing a certification program and a standards program that frankly is laughable, patently protectionist, and it seems to us that it would require only a modest effort on the part of Japan whose market is not going to be wounded by our crummy 6,000 cars sold mainly as curiosity in Japan, to do a little better job than they are doing.

So I think that I speak for the chairman, too, in asking whatever help we have from you to encourage better deportment on the part of our trading partners so that we in turn can give those people who would like to close our markets fewer arrows in their quiver, less effective ammunition.

Again we appreciate—at least I appreciate the job that you people are doing with respect to public education. Your figures on the costs of automobiles to the buying public as a result of the Voluntary Restraint Agreement are eye-popping.

Some day the American consumer will understand what is being done to it in the name of job protection in the United States. They would be better off giving them a stable of Cadillacs and a pension rather than to go that route.

Mr. McElwaine. If I may respond to your recent remark, if there is anybody in this committee that I hesitate to disagree with it would be you because you have been a friend of free trade all along. But, on the subject of the Japanese so-called barrier to automobile imports, there is a great deal of myth about that.

I don't know if you are aware, the Japanese recently changed their whole type-approval system by now so that it will be possible for an American manufacturer if he chooses to make a model for the Japanese market, to get type-certification approval. As for the standards, the stories about Japanese standards and arcane approval procedures became so rife last year that the London Economist assigned their intelligence unit to do a study on motor vehicle safety standards in Japan.

Their conclusion was that the reports of the difficulties of getting cars into Japan were greatly exaggerated; that the American safety standards were a great deal more difficult to comply with; and that the Japanese Ministry of Transport, rather than blocking imports through a lot of arcane procedures, was actually most accommodating and trying hard to encourage foreign manufacturers to get their cars into Japan because they were well aware of the difficult public relations problems they were having because of the rumors.

I think there is a lot of myth about Japanese trade policies and I don't even see it clearing up very much.

On Tuesday's hearings before the Commerce Committee I heard things repeated and repeated that I thought had been laid to rest years ago—accusations of manipulation of the yen which I would have thought would have been laid to rest by now but are still going on. There just doesn't seem to be a way to end the misconceptions that exist about United States-Japan trade but we are looking forward to next week's hearings on that particular subject, Mr. Chairman, and I hope that that sheds more light on it.

Chairman **Gibbons**. Well, certainly no one has proved there hasn't been manipulation of the yen. Most of the proof has been to the contrary that if there has been any it has been to try to increase the value of the yen.

We find that the Japanese Government and the businessmen over there are very interested in trying to get a more stable yen and appeared to be very cooperative to me in trying to solve this problem which I think is perhaps the overriding economic problem we have right now.

Frankly, we are looking for suggested solutions to the problem as much as anything, not only the misvaluation of currencies. We suggested to the Japanese that they complete as rapidly as humanly possible the internationalization of the yen which I understand will take some rather dramatic changes in their own internal system. I hesitate to interfere with anyone else's internal economic system but I don't see any other way out of that now because until the yen is in greater demand as an international currency I am afraid the pressure will always be on the dollar.

Now, there is enough that I don't know about this subject to fill volumes that would fill this room. I am afraid to say there are a lot of other people who don't know about it, also. So that is the purpose of those hearings.

Any suggestions you may have about that, we look forward to with great anticipation.

Now, on this we are learning more and more, more and more about the subject of trade barriers at the import level of automobiles. I must say it is an area in which there are a lot of myths and sometimes we confuse myths for facts, and I have room to go. I am attempting to learn more. I think what Mr. Frenzel refers to, and certainly I came down hard with respect to, is the apparent ability for us to receive into this country a car that the manufacturer certifies meets the domestic standard of our law but not the same ability to do that in Japan.

I realize things get lost in translation. This committee then has to turn to people who seem to know what they are talking about. I don't think I betray any confidence when I say the committee met with the chamber of commerce over there. It was our general impression that they had only recently analyzed what the Japanese had done, but came to the conclusion that what they had done would be of great help to the German car manufacturers but not much help to the American car manufacturers.

Our plea to the Japanese was we are not going to hurt your market, we don't even intend to penetrate it, but it would help us if you would remove any barriers that are to your market for dealer certification.

I have since that hearing received further communication from the Japanese Government. I am trying to understand exactly what is being driven at but one of the proofs of this pudding is we will have to look to Ford and General Motors and say, "Are you getting the same kind of treatment in Japan that the Japanese manufacturers get in this country?"

So far, they are not telling us that either. I have not talked to them recently. Last time I talked to them was about 2 weeks ago. So we need to clarify that point.

Maybe not many of your dealers sell Ford and General Motors cars but I assume that some of them do. Some do in my own community. It looks like we can once and for all remove this as a political stumbling block because I don't think it has any economic impact, but it apparently is still a political stumbling block that needs to be cleared away.

I appreciate what the Japanese are trying to do and it may be we are just getting lost in, one, not thoroughly understanding what goes on in both this country and Japan; or two, we are just lost in the vagaries of translation.

But I realize that the Japanese have been trying. They have made an effort to do something but there is still a problem there.

Mr. **McElwaine**. I think——

Mr. **Frenzel**. May I talk about that a little bit.

Mr. **McElwaine**. Excuse me.

Mr. **Frenzel**. We have visited auto plants and so on over the years and this year the Japanese under the leadership of Prime Minister Nakasone, are making a determined effort to reduce standards barriers not in automobiles—in fact automobiles are the least of our concern because we don't ship very many of them over there—and they produced only recently under the leadership of Cabinet Secretary Gotoda an excellent list of standards improvements which I think all American shippers to Japan are going to find very helpful.

We were advised by the American auto representatives' resident in Japan that it would be a splendid advantage for Mercedes and Volkswagen and not a very splendid one for the United States. Again, that can be related to the nature of the business, the large number of models they were selling and the small number of vehicles.

So we raised a little cain with the Japanese about that. I think we overdid it because we didn't stress how pleased we were with the total package; rather, we went at the problem of self-certification which we thought would be such an easy thing to do and it would be such an effective way to defang a good deal of American criticism.

Subsequently, the Japanese Embassy in the United States has reported that the Japanese Government has gone to a great deal of work to explain their program in greater detail to our representatives over there. Our staff called the General Motors chairman. He has confirmed that yes, the new system is probably better than he suspected and might be a help or probably will be a help. That is not a completely definitive statement.

We are to be in touch with him later. Maybe we have overstressed the point. Nevertheless, it seemed to us to be an example of something Japan could do very easily and we wished that they had had more aggressive self-certification remedies.

Mr. **McElwaine**. It would have saved us a lot of problems, too, if they had come in earlier, yes. The situation though I think you refer to is that the Volkswagens shipped to Japan are made in Germany to Japanese specifications. They are building them to the Japanese safety standards, the Japanese electrical standards, Japanese emission standards, and they are thereby able to certify in Japan that these cars meet Japanese standards.

The same is true of BMW which increased its market share in Japan in the last year by over 140 percent and to a lesser degree, Mercedes-Benz. An American manufacturer has yet to build a car to Japanese specifications. They still are shipping the cars, the 6,000 cars that they send, right off the U.S. assembly line made to U.S. specifications and then, once they get it to Japan, taking them on an individual basis and modifying them to meet the Japanese standards.

It would be contradictory to say you could have type certification for American cars in Japan since they don't make a type for Japan and until such time as they decide to make a real effort to get into that market and make a car that meets the Japanese specifications, I think it is hypocritical of them to complain that they cannot certify their cars for Japanese standards.

Chairman GIBBONS. Well, in order to clear it up I am going to write the chairmen of Ford and General Motors and ask, "Are you being discriminated against in the Japanese market?" And see what their response is.

We have a political issue that is all out of shape here and I want to ask the staff to make note of that and let's get that letter off as quickly as it can be composed.

I don't want to whipsaw anybody where they are not—I want to remove it as a political issue. It is a political issue that is all out of proportion to the situation. We might write to the auto workers and see what their response is, too.

It has gotten all out of shape and I am just trying to remove the issue as rapidly as we can identify it and get them going.

Mr. FRENZEL. Perhaps the worst effect is that we have not congratulated the Japanese enough for the real improvements they have made in some of the other areas.

Mr. NEMET. Mr. Chairman, if I may.

Mr. FRENZEL. They ought to be congratulated when they are doing a good job.

Mr. NEMET. Mr. Chairman, I would imagine for about the last 10 years I was actively trying to export cars overseas. In all fairness I tried to export these to Europe because it was a good market. I was a Ford dealer, a large Ford dealer.

The reason I took the franchise initially was because they promised me I could export cars overseas.

Mr. Chairman, if I were to tell you what I went through trying to take an American car, trying to get permission from the domestic manufacturer, to export a car to Europe, it is just an unbelievable story. They did not want to export their cars overseas. They said they don't meet the standards. But what would it take to meet the standards? It would take about 125 dollars' worth of parts that were available but which they would not make available to a domestic Ford dealer to put them on the automobiles to ship them overseas.

Without putting the parts on I couldn't ship the cars overseas. I couldn't believe it. In this great trading Nation they would never allow us to take an American product which people wanted overseas and ship it. Maybe they don't want to sell overseas.

It just doesn't make sense, sir.

I have plenty of documentation. I still believe in my files. I went to the chairman's level of the big three and I had no luck, sir. It was frustrating. There was a market but they just didn't care.

Chairman **Gibbons**. Well, that is interesting.

I appreciate that. We may call on you for more information in that area sometime. There is a general perception that is loose here in Congress that one of the reasons we cannot compete is because those foreigners won't let us in. If true, we ought to do something about it. If it is not true we ought to end the rumor.

Mr. **Nemet**. Mr. Chairman, I begged, I pleaded, I went down with corporate attorneys, I met with corporate attorneys in Detroit, and you know it was funny. The—you have a Domestic Division and an International Division. The Domestic Division wanted the sales but the International Division, their attorneys would not permit them to achieve the sales through me. We had the contacts, we had the market. They just didn't want it. It was amazing.

For a long time I was thinking about, well, maybe I should make this information available but if you need the information, Mr. Chairman, it is available.

Thank you, sir.

Chairman **Gibbons**. Thank you.

Thank you very much, gentlemen.

Our next witnesses are fellow lawmakers from the State of New York, Mr. O'Neil and Mr. McCann. We appreciate your coming. We are sorry you had to wait so long.

STATEMENT OF ASSEMBLYMAN JOHN G. A. O'NEIL, ACCOMPANIED BY ASSEMBLYMAN JOHN McCANN, NEW YORK STATE ASSEMBLY, COMMITTEE ON AGRICULTURE

Mr. **O'Neil**. Mr. Chairman, we first of all wish to tell you that we are absolutely delighted to be here and thank you very much for your graciousness in extending this opportunity to be here with you. I have been previously assured of your affability by my own Congressman, David O'B. Martin whose seat I took and I would like to present to you also Assemblyman John McCann from the adjoining assembly district, also a rural district in New York State whose Congressman here is Congressman Wortley and Congressman Boelhert.

Chairman **Gibbons**. We are glad to make your acquaintance. I also knew your precedessor, once removed, Mr. McEwen.

Mr. **O'Neil**. Yes, a very fine individual as well.

Thank you, sir.

I would like to at this point pass along some very pertinent testimony with respect to the problem, and hope you would take into consideration the pressing needs of the agricultural community in New York State.

Good morning, ladies and gentlemen, I am New York State Assemblyman John O'Neil, ranking Republican member on the Assembly Agriculture Committee. I represent a rural district in upstate New York that is heavily agricultural. I also presented Assemblyman John McCann, also, from a primarily rural district in New York.

We would like to stress that unless Congress takes appropriate action, the flooding of New York State markets by heavily Government-subsidized Canadian farm products will cause the State to forfeit much of its agricultural base. Massive subsidies to Canadian farmers from their Government together with a vast disparity in the American-Canadian currency exchange rate, are combining to undermine seriously the competitive position of farmers in New York State.

I might add, Mr. Chairman, with relation to the prior witness, that we are growing our products to Canadian standards as well.

We have come to address the subcommittee regarding a problem of enormous consequence to the United States and specifically to New York State. It relates to Canadian agricultural policy and Canadian trade practices which combined are placing unfair economic and competitive pressures on our producers of food. At the outset, permit me to emphasize we are not protectionist either by nature or by philosophy. But we are realists. We are concerned about the short-term and long-term ramifications for our farmers and for our consumers, whose interest in this matter cannot be denied.

The nature of the dilemma is that, which the Tariff Act of 1930 and the GATT were meant to address. These mechanisms, however, are becoming both cumbersome and absolutely inefficient, especially when dealing with perishable products.

Canadian growers of commodities have dramatically increased their presence in New York State marketing areas. To cite one example among many, Canadian potato exports into the United States have increased by some 683 percent between the growing seasons of 1975 and 1981. This is an increase of some 429 million pounds of potatoes imported into the United States over 6 crop years.

This, however, is not in itself the problem. New York State's farmers, like all American farmers are willing and able to compete fairly with farmers from around the world. It is this productivity and efficiency that made American agriculture the world's renowned food resource.

But the key words are: compete fairly.

Our farmers are finding themselves competing not just against farmers in Canada but against those resources of the Canadian Government. According to the New Brunswick Department of Agriculture and the United States International Trade Commission, Canadian potato farmers received some $13 million in assistance from 1976 to 1980. This came in the form of both Government loans and grants. This subsidy program goes far beyond anything available to New York State farmers or to Maine farmers.

It gives Canadian farmers an extraordinarily unfair advantage.

Beyond this, the Canadians have a great advantage due to the exchange rate which, as of March 1, 1983, was $1.20 in Canadian currency for $1 of American currency. So this allows Canadian farmers and wholesalers to undercut American farmers without even forfeiting profit.

In line with the announcement of your hearings, which we certainly applaud, one of the elements you indicated is that we ought to strengthen the Government's ability to identify and to address trade distorting policies pursued by foreign Governments. I think that is just exactly what we are looking at here.

The Canadians have taken advantage of the exchange situation and then have multiplied that advantage through various forms of subsidy programs. Let me cite just a few of those.

There is a storage grant that is available in Canada which is something that allows many of the root crops, which happen to be the crops essentially grown in New York State, to be supported for one-third of the essential cost of the development of storage facilities.

Second, with respect to market incentives, there have been price supports established for these crops and those price supports have been at the rate of 90 percent of the last 5 years' average pricing in Canada. So the price support is really tremendously high in Canada.

Again it provides something that we certainly see as a disadvantage to our farmers.

Likewise, for farm improvements there are loans and grants particularly for the tilling of fields. We have large farms which have been able to afford the tilling of fields but in many cases we also have people who have not been able to provide the kind of drainage that would allow crops to grow in a favorable light with Canadian crops.

Also we find that the Canadians have an Atlantic freight subsidy that assists them in transporting their products—subsidy which covers roughly 30 to 50 percent of the cost of freight for the transmission of those products.

We now know also that Canada is planning another element called Canadrex which will be a type of grant for export trade in agriculture. These elements combine with the fact that there is the favorable exchange rate for the Canadians to really imperil the New York State products. This situation justifies countervailing and antidumping duties. Certainly we recognize that. The difficulty, of course, is, among others, time.

The recent volume of Canadian commodities flooding the New York State markets is awesome. From 1978 to 1980 there was an 884-percent increase in the amount of cabbage imported from Canada. During that same period carrot imports rose some 63 percent.

Moreover, we understand the Canadian intentions for 1983 are for similar increases in other crops such as onions. The Canadian area this year had difficulty with onions due to weather conditions. The Canadians also plan increases in maple syrup, which will imperil many areas in Vermont as well as New York State; cut flowers and other horticultural products, timber, eggs, and Christmas trees.

Please do not draw the conclusion that these import trends imply that the Canadians are coming to the rescue of our consumers who are somehow in need of additional volumes of these commodities. There is a common belief among many that New York State is a place of skyscrapers and concrete. The facts however reflect the State's vast ability to feed its population and others.

For example, to highlight a few of the commodities, New York State is the Nation's fourth largest producer of fresh market vegetables. It is the Nation's sixth largest producer of vegetables for processing. The State ranks first in production of cabbage for fresh market and third in production of cabbage for processing.

The Empire State is also third largest in onions and eighth in carrots for fresh market.

We rank 10 among States in potato production and 14th in egg production.

We are certain of the effects imports have on our farmers. This past growing season we witnessed in Orange County the plowing under of certain crops because Canadians undercut the price to the point where harvesting and selling the crop would have meant a loss.

One large farmer in Orange County derived at one point that the price of the Canadian product was exactly the price that he would have tied up in his product when it was picked before it was ever processed, before it was ever transported, before there was any profit to come into the picture.

The short-term effect already evidenced is economic devastation of our farms. We are here partly because we believe that neither New York State nor any other State should be dependent on Canada or any other country for basic food products. Yet, if we continue to allow the Canadians this advantage we will drive the farmers out of New York State—drive them out of business—and we will be dependent on Canadian farms.

I am sure that as we also suffer with the present advantages of extremely competitive prices from Canada that as soon as our suppliers are dried up that the future prices and price gouging will will come into effect because of the age-old situation of the law of supply and demand.

We are also of course at the same time working on a very serious problem with overproduction of milk in the United States. New York State is and has been second or third in the Nation of dairy production year by year. We are attempting in our own agricultural policies to have many of our farmers in the dairy field try to solve the problem of the glut of milk by transforming their farms into crop farms but we cannot do it if we don't have fair competition, if we cannot compete with Canada.

This type of concern led to the Tariff Act of 1930 which I am sure you are aware of and which established provisions under which small businesses could receive relief from unfair foreign competition.

The relief was in the form of countervailing and antidumping duties which would equalize the competitive situation where necessary. But these provisions have not yet in fact helped New York farmers who face this competition from Canada because of the cost and complication for filing and the time for filing are both very involved and very onerous.

New York State farmers simply don't have the resources or the time to resolve the problem alone.

The Maine Department of Agriculture estimates that the Maine request for duties will cost its potato industry well over $150,000 which will come directly from the industry. Moreover, even after that petition is filed, corrective action will not be taken until some 280 days later, if it is taken at all.

This obviously presents problems to industries handling perishable goods.

A most important consideration this is, because there is only limited warehousing and that costs money.

I happened to peruse a bit of other material and with respect to the United States antidumping/countervailing duty legislation, I noted with interest the time periods. It could take up to 250 days in the regulatons. However, there has to be a time to assess the situation. There has to be a time for the filers to put together their case.

Actually this could go very well into 10 or 11 months before any resolve could take place and that of course means any perishable product is absolutely worthless.

I am very much afraid that if we don't speed that process we will be in a very difficult situation. We should look at what other countries have done. We have heard a great deal of that today. The relatively recent promulgation of agricultural trade laws by the Canadian Government does just such things. Through their so-called fast-track system, farmers there can win the matter of today's secure tough Government sanctions against farm-product imports, upon presentation of the slightest bit of evidence that market damage will occur.

Of course we all know all of the situations. You don't have to leave your crop in the ground to show market damage.

There were many, many situations that would do that. The Canadians are making use of that. That is their advantage and that is why we extol our doing the same thing, the Congress taking action to affect that.

We do not plead for unreasonable restrictions, we merely commend you for your consideration, the need to streamline our procedures so as to allow farmers a reasonable opportunity to secure application of our existing laws.

Today, we voice our strong support for legislation that will accomplish this. Two different bills, H.R. 1269 in the House by Congresswoman Snowe, and S. 50 in the Senate by Senators Cohen and Mitchell have appeared to offer appropriate solutions. We support the efforts made by USTR William Brock in his current fight to force compensation from the Canadians for their clear violation of the GATT.

At times it appears the United States is the only country that respects the GATT. If that is the case, then we do have to take other steps. It is somewhat reassuring that in at least one instance we are seeking to hold other countries to this as well. In the meantime, while corrective legislation is making its way to law, our farmers continue to face an enormous problem.

Because of this we are now exploring ways to assist them for the time being. Action by the State, however, should not be necessary. Foreign trade is clearly a responsibility of the Federal Government, a responsibility that in this case has not been met.

For the time being, we in New York State are only planning to pinch hit.

We have to come here, Mr. Chairman, to briefly outline the situation we face in New York and to bring to the attention of the subcommittee the severe nature of the problem. We intend to monitor Federal activity on this vital issue and permit us to add that the views we express coincide with the views and concerns of several of our colleagues in the State Assembly.

Fellow Assemblyman Larkin of Orange County have been very instrumental and very concerned about this area as have my colleagues, Assemblyman John McCann; Assemblyman Litalio; Assemblyman Sowecki; Richard Coom from the Orange County Black Dirt area; Steve Holley and Ray Chezborough from the central and western sections of New York State.

We would also like to indicate that Congressman Benjamin Gilman is supportive, as well. We commend you for holding these hearings and appreciate the opportunity to be heard. We offer our complete cooperation as your deliberations into this matter continue. We will certainly indicate we will do all in our power to cooperate with you as you resolve this issue. Please feel free to call on us for any help we can give.

[The prepared statement follows:]

STATEMENT OF HON. JOHN G. A. O'NEIL AND HON. JOHN W. MCCANN, MEMBERS OF NEW YORK STATE ASSEMBLY

Good morning, ladies and gentlemen, I am New York Assemblyman John O'Neil, Ranking Republican Member on the Assembly Agriculture Committee. I represent a rural district in Upstate New York that is heavily agricultural.

I have come here today to speak to the Subcommittee on Trade about a problem that is devastating to many of the farmers in New York State. The problem is unfair competition by Canadian imports—the kind of problem the Tariff Act of 1930 and the General Agreement on Trade and Tariffs were meant to solve. However, those mechanisms have not solved the problem at all. If anything, they have only made it more difficult to approach.

Here is the difficulty New York State farmers face: they are competing in a market with a definite demand component. In that market, they are now competing with Canadian farmers who have recently and dramatically increased their presence in that market. For example, Canadian potato exports to the United States have increased by some 683 percent between the 1975 crop year and the 1981 crop year. That is an increase of some 429 million pounds of potatoes imported into the United States over a period of six crop years.

This flooding of the market, however, has not been the basic problem. New York State farmers are willing to compete fairly with Canadian farmers, for it is that kind of healthy competition that American farming was built upon. The basic problem is that the competition is not fair. American farmers in New York State are finding themselves competing not just against farmers in Canada, but also against the concerted efforts of a foreign government and the exchange rate.

According to the New Brunswick Department of Agriculture and Rural Development and the United States International Trade Commission, Canadian potato farmers alone received some $13 million in assistance from 1976 to 1980. These came in the form of government loans and grants. This Canadian subsidy program goes far beyond anything available to New York State farmers. This gives Canadian farmers an unfair advantage.

On top of this, the Canadians have a great advantage due to the exchange rate. As of March 1, 1983, one American dollar was worth $1.20 in Canadian currency. That means every time an exporter of Canadian goods takes home one American dollar, he is actually taking home $1.20 Canadian. This allows Canadian farmers to undercut American farmers without losing profit.

The Canadians have taken advantage of the exchange situation and then multiplied that advantage through massive subsidy programs. They are now flooding the New York State markets, and the following figures tell the story. From 1978 to 1980, there was an 884 percent increase in the amount of cabbage imported from Canada. The market for New York State's processed cabbage industry—the second largest in the Nation—was suddenly flooded with cheaper Canadian cabbage. During that same period, carrot imports from Canada rose 63 percent. Moreover, now in 1983 we are seeing similar dramatic increases in other crops, such as maple syrup, cut flowers, timber, eggs and Christmas trees. We understand that soon the

Canadians plan an even larger increase in exports of onions to the United States—a commodity in which New York has a large stake.

Because of these dramatic increases in Canadian imports flooding U.S. markets at prices well below what any unsubsidized farmer can afford, farmers in our State are slowly going out of business. One cabbage farmer in my district was forced to plow under an entire crop of cabbage because the Canadians had undercut the price to a point where selling his cabbage would have meant losing money. My Colleague, Assemblyman John McCann, has informed me that growers in his district face similar problems. Over and over again, we have been told by growers in our districts that competing with the subsidized Canadian farmer is virtually impossible.

New York State farmers have come to my colleagues and me, asking us to help. And we must help, for our districts, our State and our Nation have always depended heavily on agriculture. The United States takes pride in being independent from other countries for food. We are among the very few countries in the world that can and do, for the most part, feed themselves. I am here today partly because I believe that neither New York State nor any other state should become dependent on Canada or any other country for basic food products. Yet, if we continue to allow the Canadians this advantage, we will drive the farmers in New York State out of business and thus become dependent in New York State on the Canadian farmer.

This type of concern led to the Tariff Act of 1930 which, as I am sure you are aware, established provisions under which small businesses could receive relief from unfair foreign competition. The relief was in the form of counter-vailing and anti-dumping duties which would equalize the competitive situation where necessary. But these provisions have not in fact helped the farmers in New York State who face unfair competition from Canada because the costs of filing and the time period involved are prohibitive. New York State farmers simply do not have the money to file or have the time to risk another growing season. The Maine Department of Agriculture estimates that the Maine request for duties will cost its potato industry well over $150,000. Moreover, even after the petition is filed, corrective action will not be taken until some 280 days later, if it is taken at all. This obviously presents problems to industries handling perishable goods.

Legislation to speed up this process and make it affordable is currently pending in the House and the Senate—in the House as Bill H.R. 1269 and in the Senate as S. 50 (Cohen). We are here today to voice our strong support for this legislation, and we expect the New York State Congressional delegation to support it as well.

We also support the efforts being made by U.S. Trade Representative William Brock in his current fight to force compensation from the Canadians for their clear violation of the General Agreement on Trade and Tariffs. At times it appears that the United States is the only country that respects the G.A.T.T. treaty. It is somewhat reassuring that in at least some instances we are seeking to hold other countries to it as well.

In the meantime, while corrective legislation is making its way into law, our farmers continue to face an enormous problem. Because of this, we are now exploring ways in which New York State can assist its farmers in this matter for the time being. Action by a State, however, should not be necessary. Trade is clearly a responsibility of the Federal Government—a responsibility that in this case has not been fulfilled. For the time being, we in New York State are only planning to pinch hit.

I have come here today, Mr. Chairman, and briefly outlined the situation we face in New York State and have tried to bring to the attention of the Subcommittee the severe nature of the problem. We intend to monitor federal activity on this vital issue. We will not forget our farmers in New York State, and we trust you will not either, by acting quickly and substantially on this issue.

Chairman GIBBONS. Thank you very much. That is very interesting testimony.

As I listened to it I remember that I have talked to Dave Martin about some of these matters. It is obvoius we need to go into more of them. I am also struck by the fact that your farmers and mine apparently have the same problems and they are difficult to solve.

You have made good suggestions for us. We want to follow through on them. Any information you may have gleaned—and I hate to call on you for this because our Government ought to have it—to let us know what the Canadians are doing in the way of subsidy would be of great help.

I realize you have some in your statement and I think that also while international trade is a matter for the Federal Government to handle, perhaps there is a way in agricultural trade that States can assist their growers in making these laws work more effectively.

We shouldn't be throwing that burden at you but we don't have real good laws that were designed to pick up agricultural problems. We need to pay more attention to it. Perhaps has there is more activity in States such as New York and I know I have talked to my Florida people about the same thing, we will learn how to design a system that will give adequate relief for unfair practices.

So we look forward to any additional information. I will keep your statement and go over it again and hope that in the drafting of legislation we can find a way to help the unique problems that arise in perishables particularly.

But one of the big problems we have is that we cannot get the rest of the world to sit down to the table with us and try to draw up international agriculture laws. I think we are going to be successful eventually in doing that but it is a rough one.

Mr. Frenzel.

Mr. FRENZEL. First of all, I want to thank Assemblyman O'Neil and Assemblyman McCann for coming in. We are flattered by the appearance of State legislators and most of us have been sitting in your seat before we got here, and we know that your problems are more real and more immediate and you have less weaponry with which to respond to them.

We are really pleased that you came in. I wish we would get more testimony of this kind.

Last year we got into the seed potato problem up in Maine and we did legislate.

Chairman GIBBONS. And carrots, too, don't forget.

Mr. FRENZEL. A few carrots maybe, too, but I do recall that at that time despite the stress visited on Maine, Canada was a net importer of potatoes from the United States by importing them in large quantities in the West. I wonder if you can tell me if that situation still obtains?

Mr. MCCANN. In Maine the only thing I heard was they took a loss of $60 million in their potato industry last year because of the problems we went into here today.

It is the same in New York State. Our constituents come to us and say, gee, can't you do anything to help us? Of course it is a Federal problem, we feel that it is, and that is why we are here, to enjoin you to really look at our situation and see if there is something in legislation that would help us.

We feel strongly that Congresswoman Snowe's bill in the House and Senator Cohen's bill in the Senate would go a long way to address the problems we are facing. I am here lobbying as strongly as I know how to ask you to take a look at that legislation and get it enacted into law if possible.

Mr. FRENZEL. Thank you.

One of my problems is that as I understand your testimony you are the victims of unfairness, and the Snowe and Cohen bills, as I understand, go to the 201 process and trying to accelerate relief in that process by granting it immediately and then if the ITC decides there was no injury then revoking the action and extending it or modifying it in the case of injury.

Working through 201 would not seem consistent with your allegation that there is unfair practice there.

Mr. O'NEIL. If I might proffer a bit of an answer, Congressman Frenzel, with respect to that. We heard earlier today of course some would see great problems with 201, but I again emphasize the fact that if we were to possibly concentrate on fast tracking with perishables in particular that we might be able to address the problem.

The particular problem that growers have, as you of course asked the question about some of our particular root crops, but I am sorry I don't have this year's figures to give you, but from 1977 to 1980 the ratio in billions of pounds for what New York State sent to Canada as opposed to what Canada sent to New York State, it was approximately a third of 1 million, no more than 400,000 pounds of potatoes went to Canada from New York State and conversely 27 million pounds came back into New York State. Other root crops of similar ratios were there.

The ratio of cabbage was 1 to 2.5. For carrots it was absolutely zero from New York into Canada but 7.5 million pounds of carrots sent into New York State over that 3 years. For cauliflower, again there was none sent to Canada, however Canada sent 1 million pounds into New York State.

For celery, it was a half million pounds from New York to Canada with 9 million pounds coming back into New York State which is a ratio of 1 to 18.

Lettuce was 13.5 to 18.5 in ratio. Relatively close.

Onions was a quarter of 1 percent to eight-tenths of 1 percent, that was not so bad. The Canadian situation was exacerbated by poor weather. We indicated the potatoes were roughly a third of 1 million to 27 million. There is a real problem in some of our areas.

The Canadians would of course argue overall that agricultural products balanced out fairly well and in due deference to Congressman Gibbons, citrus products which Canada has a great deal of difficulty growing in their cold climate.

Chairman GIBBONS. But we have the same border problems with Mexico and all the other areas.

Mr. O'NEIL. If we could have some fast tracking for perishables, we are not worried that the crops will rust as the auto manufacturers might be but we are worried that they will have to be turned under.

Mr. FRENZEL. A lot of products you talk about are not perishable, they are root crops.

Mr. O'NEIL. With the damage done by the Canadians and their assistance in transportation and in storage facilities, and assisting with that element provides that unfair advantage which becomes one of the bases upon which the application for a countervailing duty could be made.

Mr. MCCANN. The other thing is the cost involved of these petitions. In Congresswoman Snowe's bill she wants to take some of the $25 million we took in to put in a bank so to speak to help our people with the tremendous costs in litigation. Again, Canada does have this fast track. All we want is equality. Our farmers don't want any special help. They just want to be treated the same as our northern neighbors are.

The other thing that bothered me, I read recently where the Canadian Credit Corp. is selling bonds in the United States to finance the subsidization of their Canadian agriculture. They are not only doing that to us, they want to come over and take our money to do it. This bothers me.

Chairman **Gibbons**. I can understand your feeling on that.

Mr. **Frenzel**. Again I want to thank both of you. We look forward to working with Congressman Martin and others on this problem. Thank you.

I yield the balance of my time, Mr. Chairman.

Chairman **Gibbons**. Thank you very much for coming.

Mr. **McCann**. Thank you very much for having us.

Mr. **O'Neil**. Thank you very much.

Chairman **Gibbons**. Encourage your other State legislators to come, too, and tell us about their problems. We understand better sometimes what they are saying than others. Thank you.

Our next witness is from the Metalworking Fair Trade Coalition, Mr. Robert J. Blinken, chairman, MITE Corp.

STATEMENT OF ROBERT J. BLINKEN, CHAIRMAN, MITE CORP., ON BEHALF OF THE METALWORKING FAIR TRADE COALITION

Mr. **Blinken**. Thank you, Mr. Chairman.

I will not read the statement I prepared.

Chairman **Gibbons**. It will be a part of the record as you know. Make sure we get the gist of it.

Mr. **Blinken**. I will touch the high points.

I have the objective of making a very specific recommendation. One of the earlier witnesses was asked for a specific one, I am going to attempt to be extremely specific.

The Metalworking Fair Trade Coalition which I represent is a coalition of approximately 30 industrial trade groups in the metalworking area. The underlying companies normally employ approximately 1.4 million people.

Chairman **Gibbons**. What kind of products do you all make?

Mr. **Blinken**. Pipe fittings, forgings, nuts, bolts, screws, products manufacturerd out of metal. I suppose the simplest and most current characterization would be smokestack industries. Concentrated in the Midwest but not exclusively.

Our members operate approximately 25,000 plants in the United States. We do represent a fairly broad cross-section of the metalworking industry.

In December 1982 we had a first general membership meeting of the Coalition. At that time we identified as one of the priorities for our group the problem of dealing with what we refer to as downstream dumping and in our case most particularly downstream dumping of steel. Downstream dumping is a form of laundering a commodity or component purchased in a foreign market at a price which would be a dumped price in the United States. It is sufficiently altered to acquire a new TSUSA number, and then exported to the United States quite legally without the antidumping statutes being applicable.

I am not here to argue philosophically about free trade or protectionism. As far as I am concerned they are merely terms. My understanding is that the intent of trade policy of this country is to deal with the enlightened self-interest of the American people. I think we have over the years determined that dumping was something which was not in the self-interest of the American people. Downstream dumping is actually worse than primary dumping.

If I may give you an example from the industry with which I am most familiar, the industrial fastener industry. In nuts, bolts, and screws over one-quarter inch in diameter, imports to the United States run between 300,000 to 400,000 tons a year. These are steel products. We recall that in 1978 when trigger pricing went into effect the goals were to maintain steel imports at something like 20 million tons so we are talking about 2 percent of the total steel import that was intended at that time.

The economy of the United States when nuts, bolts and large screws are dumped—and we believe a substantial portion of these 300,000 to 400,000 tons are part of downstream dumping—loses not only the manufacture and sale of the steel that goes into the products but also the economy of the United States loses the conversion labor that takes that steel and makes it into the product which is ultimately sold in the United States.

So that the effect of downstream dumping is actually considerably worse than the effect of primary dumping because it adversely affects our economy in two areas. One of the most destructive aspects of it is the tremendous disincentive it creates for American industry, for the American metalworking industry to improve itself. If you take the example once again of industrial fasteners, the steel content is roughly 50 percent of the cost of goods sold in an industrial fastener. Labor is perhaps 20 percent.

So the steel is more than twice the labor in content. Speaking from my experience, we operate in Connecticut and Indiana, we make nuts in our plants in Indiana and I would say we have the most modern and efficient nutmaking facility in the world. We have the most modern machinery, we have probably the highest pounds per employee output of any comparable plant in the world.

But we have to sit and watch products from much less efficient manufacturers coming into the United States and being sold at prices that we cannot compete with simply because steel is available to those manufacturers at prices which bear no relationship to the price we have to pay for steel or to the fair market value of the steel.

As long as people feel that the export of unemployment to the United States is in their self-interest this procedure will continue to take place unless we plug the loophole in our trade laws which permits it to occur. I told you I will try to be very specific.

We have a very specific recommendation, simply that title VII of the Tariff Act of 1930 be amended to define fair value properly so that when there is a preference or a subsidy or a dumping of the raw material or component in a product that that be taken into account in determining fair value. It is not in our view a complex solution. It is also not a Pandora's box solution.

I know people are always concerned in trade matters about opening Pandora's box. We don't think this is that situation at all.

Downstream dumping makes sense for the exporter only when the basic material content of the product is a significant percentage of the ultimate value.

It is applicable to something like an industrial fastener because the steel content is 50 percent of the total value of the product. It is not applicable nor will it occur in a great broad variety of products; but where it does occur, it is devastating as it is in the metalworking industry.

We feel that it constitutes a clearcut avoidance of the intent of laws that have been on our books for a long time, it is something that can be corrected without having enormous impact on other aspects of trade and we feel that it would be of great importance to the metalworking industry of the United States to have that loophole plugged.

Thank you.

[The prepared statement follows:]

STATEMENT OF ROBERT J. BLINKEN, CHAIRMAN, MITE CORP., ON BEHALF OF THE METALWORKING FAIR TRADE COALITION

My name is Robert J. Blinken, I am chairman of MITE Corporation, a metalworking company with plants in Connecticut and Indiana. I am a member of the Executive Committee of the Metalworking Fair Trade Coalition on whose behalf I submit this statement. Our Coalition represents 27 trade associations whose member companies normally employ 1.4 million people in about 25,000 plants with annual sales of $75 billion. We make up the backbone of the American metalworking industry.

At the Coalition's December 1982 meeting, downstream dumping of steel was singled out as perhaps the most serious problem facing the metalworking industry; it was identified as a priority target for action by our group. As you know, downstream dumping is fundamentally an avoidance of U.S. law or international trade agreements by the export to the United States of manufactured products containing components or materials which have cost the foreign manufacturer less than what the U.S. defines as a "fair price." In other words, if the minimum "fair price" for a certain grade of steel is 20 cents a pound, we have no legal remedy now when that steel is sold in a foreign market for 10 cents a pound and then used to manufacture a product which is exported to the U.S. at a very low price resulting from the use of dumped steel. Obviously, the greater the total percentage of the cost of the finished product normally represented by the material to be dumped, the more serious the problem.

Downstream dumping occurs when there exists excess production capacity abroad for a material whose direct sale at give-away prices is blocked in the U.S. by our antidumping laws or by import quotas. When trigger pricing went into effect in 1978, a major manufacturer of wire fence sued the Treasury because he anticipated avoidance of trigger pricing by the downstream dumping of steel here in the form of wire fence. The suit was mooted when wire fence was subsequently included in the trigger price plan.

Downstream dumping problems particularly affect steel users because of the combination of excess steel production capacity around the world and the special actions taken here to protect our domestic steel industry from dumping. The adverse effects of the downstream dumping of steel are vividly illustrated by the experience of the industrial fastener industry, one of our Coalition's member groups. When voluntary restraints on steel export to the United States went into effect in 1969, the importation of carbon wire rod decreased but, at the same time, imports of fasteners themselves grew from 20 percent to 36 percent of domestic consumption. When trigger pricing of steel went into effect in 1978, imports of industrial fasteners increased from the prior year's 43 percent of domestic market to 48 percent. Those phenomena had been accurately predicted by our own government officials. In the December 1977 Solomon report, "A Comprehensive Program for the Steel Industry", the following warning was contained:

"The system extends only to steel mill products: Hence, there is some risk that steel fabrications will substitute for the more basic steel products in U.S. imports, as occurred during the quantitative import restrictions on steel mill products imposed in the late 1960's."

Similarly, in a letter of March 21, 1978 to fastener manufacturers, U.S. Trade Representative Strauss acknowledged:

"Legitimate concern about the ramifications of trigger prices for carbon steel wire rod on domestic fastener products."

Downstream dumping of steel in the form of fasteners was documented in hearings before the ITC in September 1981. Information supplied to that hearing by the Japanese confirmed that the steel wire rod used to make fasteners was sold by Japanese mills to their manufacturers at least 36 percent below the U.S. market price and/or trigger price then in effect. The Japanese, by their own testimony, demonstrated that they were able both to avoid trigger price problems in steel by dumping it here in the form of fasteners and were able, at the same time, to give their fastener manufacturers an insurmountable cost advantage. The impact on domestic steel sales is not insignificant when one considers that imports of nuts, bolts and large screws over ¼" diameter alone aggregate between 300,000 and 400,000 tons a year. Despite this admission by the Japanese, no action could be taken under existing statutes.

Regardless of one's views on free trade, the fact remains that the downstream dumping loophole is injurious to American industry and seriously inimical to the intent of antidumping statutes and trade agreements. In the case of the downstream dumping of steel, not only does the American steel industry lose the sale of the tonnage which is legally dumped in that fashion anyway, but the U.S. also loses the employment gained in the foreign country which converts that steel to a product for export to the United States.

The downstream dumping loophole also creates an enormous disincentive to American industry to invest the capital necessary to maintain or improve its efficiency. Virtually no amount of investment in plant, equipment or technological advancement can be expected to offset the foreign competitor's cost advantage gained through the use of under-priced component material. Steel makes up as much as 50 percent of the cost of a U.S.-made fastener. When a foreign competitor can buy that steel at one-half our cost, the differential cannot be bridged by improving our plants or methods.

The remedy for this problem is not complex. It involves amendments to existing law which would close the clearly recognized loophole. There is a tendency in trade matters to be concerned about the Pandora's box effect, i.e., will an apparently appropriate action open the door to limitless new administrative and legal proceedings? In the case of downstream dumping, this seems unlikely. The practice is significant only where the component material value is normally a very high percentage of the finished product value, as in the case of industrial fasteners. In other words, where there is comparatively small value added. In a product where raw material content is only 20 percent of value, the incidence of downstream dumping would be considerably lower. The correction of this legislative loophole would reduce the incidence of trade abuse and be consistent with the intent of Congress in its various acts to protect the American worker from the practice of exporting foreign unemployment to the United States.

MEMBERS

Forging Industry Association
National Screw Machine Products Association
American Pipe Fittings Association
National Tooling and Machining Association
Alliance of Metalworking Industries
Cast Metals Federation
National Foundry Association
Iron Castings Society
Steel Founder's Society
Non-Ferrous Founders' Society
Valve Manufacturers Association
National Association of Chain Manufacturers
Metal Treating Institute
American Metal Stamping Association (Washer Div.)
U.S. Fastener Manufacturing Group
Industrial Fasteners Institute
Hand Tools Institute
Welded Steel Tube Institute
Association of Die Shops International
American Die Casting Institute
Steel Plate Fabricators Association Inc.
American Wire Producers Association
Expanded Metal Manufacturers Association
Tool & Die Institute
Cutting Tool Manufacturers Association
Industrial Perforators Association, Inc.
American Cutlery Manufacturers Association

SUPPORTING ORGANIZATIONS

American Iron and Steel Institute
Steel Service Center Institute
Machinery Dealers National Association
Specialty Steel Industry
National Machine Tool Builders Association
Metal Cutting Tool Institute
Hack and Band Saw Manufacturers Association of America
National Coil Coaters Association
Spring Manufacturers Institute
Cold Finished Steel Bar Institute
International Die Sinkers' Conference

Chairman **Gibbons**. Interesting testimony, sir. I know the damage that trigger pricing and some of the other things apparently did to you because it probably made you less competitive. Where do you get your steel?

Mr. **Blinken**. We buy some steel in the United States, some of our steel from Japan. There is no difference in price. The prices are virtually identical. We buy steel in Japan in large part because the attrition of the industries in the United States, which use certain specialized types of steel which we use, has been so great that the American steel industry no longer finds it economically attractive to make the steel that we need and therefore we have to buy it in Japan to get it.

Chairman **Gibbons**. I am not criticizing you for that, I am just trying to find out.

One of the things that has been of concern to me is how you survived with the very high price of American steel.

Mr. **Blinken**. Some of us don't survive. Our industry has shrunk by perhaps 60 percent in the last 12 years.

Chairman **Gibbons**. As the steelworkers and management try to get more pie they left less on the table for everybody else. What happened is that the American basic steel industry with its own admitted labor cost of 114 percent higher than the average American industrial wage, I don't see how they left any of you out there to survive, really.

Mr. **Blinken**. Some of my best friends are in the steel business, sir.

Chairman **Gibbons**. I know, some of mine are, too, even some of the family.

But we have to tell the truth. They are making it very difficult for people who have to use steel to compete with anybody because they have let their costs completely go out of hand the way it looks to me.

Mr. **Blinken**. I would observe, sir, that in my experience even if there were no protective measures for the steel industry in the United States the Japanese in particular would still rather sell us fabricated product than raw steel.

Chairman **Gibbons**. Oh, yes, sure.

Mr. **Blinken**. So we cannot solve the problem just by opening up the market.

Chairman **Gibbons**. I agree, it is the Japanese philosophy and our philosophy to add as much value to the product as you can before you sell it to somebody else.

Mr. **Blinken**. Sure.

Chairman **Gibbons**. They do it with almost a vengeance over there. I have criticized them probably as much as anyone has about that. One of the peculiar things is they haul rock half-way around the world when they have no use for rock. I told a Japanese legislator about that the other day and he said he had no idea why anyone would want to import rock into Japan. But they do. It is a peculiar setup.

Is the steel that these other competitive fasteners are made up of, is it subsidized or dumped within that market?

Mr. **Blinken**. Yes, sir. In 1981 I appeared before the ITC in an escape clause extension case and the Japanese argued a point which I don't remember, but they submitted the schedule of prices the fastener people were paying for steel at that time; and being as conservative as possible, using the trigger prices for much lower grades of steel than the ones they were describing at the time, the prices they volunteered they were paying in Japan for much better steel were far under the trigger price equivalents for lower grades of steel.

By their own testimony they indicated they were purchasing steel at what would have clearly been a dumped price in the United States.

Chairman **Gibbons**. All right.

Mr. **Blinken**. Actually there is a multitiered pricing structure for steel in Japan and Korea and we have had an example brought to our attention of, for example, three-tiered pricing, one price to the United States which is really the price which is required to compete with what is left of the American steel industry in these areas; another price to Japanese manufacturers which is already a dumped price by our standards; and finally when there is excess production going on, an even lower price at which the products were originally dumped in Taiwan and subsequently in Korea and we believe in mainland China now.

So that the philosophy of keeping the steel mills running at any cost seems very demonstrable in the area of steel pricing for the fastener industry.

Chairman **Gibbons**. Are you saying the Japanese are subsidizing their steel industry?

Mr. **Blinken**. I am saying, sir, that fastener companies in Japan and other fastener companies in the Far East are able to buy steel at prices that would clearly be called dumped in the United States. What the source of the subsidy is I am not prepared to testify to.

Chairman **Gibbons**. What is your proposed solution?

Mr. **Blinken**. Simply an amendment to title VII of the 1930 Tariff Act which would make it clear that if a raw material or underlying component of the product is acquired in a foreign market at a dumped price and incorporated into the product and the product is sold in the United States at a price level which is only permitted as a result of a portion of the value of the product having been sold at a dumped price, that it be construed as dumping.

If I may give you a specific example again, in 1978 when trigger pricing first went into effect one of the major manufacturers of wire fencing in the United States filed suit against the Treasury Department arguing that trigger pricing would force the dumping of wire in the United States in the form of fence which is a very small increment up from a mill product. The suit never went through the courts because the trigger pricing was amended to include wire fencing as a product to be subject to trigger pricing.

This was one example of how downstream dumping was prevented by the incorporation of product by definition into steel. But the United States has a generally narrower definition of what is a steel mill product than most countries have and therefore many products that are barely a step above mill product are not considered steel when brought into the United States.

Therefore, they are not subject to the basic tests of dumping for steel.

Chairman **Gibbons**. Mr. Frenzel.

Mr. **Frenzel**. Mr. Chairman, I have some difficulty following that through. Anybody that buys steel at a dumped price, if you amend to say that, and later fabricates it and ships it, you are going to have a fair-sized job of proving the dumping price. The Japanese mills are thought to be more efficient than U.S. mills and they may sell their product to the Japanese fastener makers at what is under our dumping laws a fair price and that may be because of plant efficiency and labor differential and other factors, maybe a hell of a lot less than you pay.

What happens in that case?

Mr. **Blinken**. I have no problem with that because if it is sold in Japan at what under our law is a fair price then it is a fair price, it is not downstream dumping. It is only when it is sold to a Japanese manufacturer at what under our law would be a dumped price and the product then sent to the United States that it is downstream dumping.

I have no problem with a fair price sale.

Mr. **Frenzel**. The trigger price is out. We are talking cost of production as far as the antidumping statute is concerned?

Mr. **Blinken**. Yes, sir.

Mr. **Frenzel**. Doesn't our antidumping statute refer to cost of production?

Mr. **Blinken**. The problem, sir, is that cost of production does not include, does not test the cost of purchase of something which is incorporated into the product which is produced.

Therefore, if a grade of steel market price—fair price if you will for a certain grade of steel—is 20 cents a pound and a Japanese fastener manuacturer buys it at 5 cents a pound and incorporates it into a product and sells the finished product in the United States for 15 cents a pound when the steel alone cost 20 cents a pound in the United States, that is downstream dumping. That is happening. That happens all the time. That consistently happens.

Mr. **Frenzel**. Under your definition it wouldn't make a difference what the comparative price in the United States was, downstream dumping would occur if the original steel sold at less than the cost of production, is that correct?

Mr. **Blinken**. Yes, sir.

Mr. **Frenzel**. Thank you very much. I understand that now.

Chairman **Gibbons**. Thank you very much.

Mr. **Blinken**. Thank you very much, sir.

Chairman **Gibbons**. This concludes our hearings for today. I thank all those who came and those who stayed. We will resume next Tuesday, April 19, 9:30 a.m. in room B-318 in the Rayburn Building.

[Whereupon, at 2 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., Tuesday, April 19, 1983.]

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